



International
Federation of
Library
Associations and Institutions



CENTRE ON
KNOWLEDGE
GOVERNANCE

Mr. Benson Mpalo, Registrar and Chief Executive
Patents and Companies Registration Agency (PACRA)
PACRA House, Haile Selassie Avenue, Longacres
P.O. Box 32020, Lusaka, Zambia
By email: <Copyrights.Amendment@pacra.org.zm>

March 30, 2026

Subject: Call for comments - Copyright and Related Rights Bill, 2025 (extended deadline)

Dear Mr. Mpalo,

The International Federation of Library Associations and Institutions (IFLA), Electronic Information for Libraries (EIFL) and the Geneva Centre on Knowledge Governance appreciate the opportunity to comment on the Copyright and Related Rights Bill, 2025.

In Zambia, the Library and Information Association of Zambia is a member of IFLA. EIFL partners with the Zambia Library Consortium (ZALICO), a membership organization of 28 university, college, polytechnic and special libraries. The Geneva Centre on Knowledge Governance advises diplomatic missions in Geneva on international copyright negotiations, and has held several workshops with the African Group, including delegates from Zambia.

Libraries are universally committed to fair and affordable access to knowledge for education, research, and socio-economic development. As institutions acting in the public interest, libraries have a key stake in copyright reforms. Routine library activities and services regulated by copyright include providing access to essential learning materials, assisting researchers with specialist resources and data management plans, serving people with disabilities on an equal basis with others, and preserving cultural heritage for future generations. Libraries support copyright laws that balance the interests of authors and creators with the public interest in accessing information for education, research and further creativity. Overly restrictive copyright laws (and licences) can harm the public interest by impeding access and increasing costs. Well-calibrated laws can enable libraries to properly support research, innovation and the use of digital research tools, facilitate elearning and online education and undertake socially valuable projects, such as preserving Zambia's cultural heritage.

The Copyright and Related Rights Bill, 2025 contains several positive provisions from the public interest perspective. At the same time, some provisions require clarification or could, we believe, benefit from improvements to better align with national priorities and policies. In the comments below, we first respond to the observations and proposed amendments submitted by the International Federation of Reproduction Rights Organizations (IFRRO) and the International Confederation of Societies of Authors and Composers (CISAC). We then make our suggestions and recommendations.

We hope our comments are useful. Please let us know if you have any questions. Should you wish to discuss any of the issues further, we would be glad to arrange an online meeting.

Yours sincerely

Stephen Wyber

Stephen Wyber
Director, External Affairs
International Federation of Library Associations and Institutions
Email: Stephen.wyber@ifla.org

Teresa Hackett

Teresa Hackett
Copyright and Libraries Programme Manager
Electronic Information for Libraries (EIFL)
Email: teresa.hackett@eifl.net

Sean Flynn

Sean Flynn
Director
Geneva Centre on Knowledge Governance
Email: sean.flynn@graduateinstitute.ch

The **International Federation of Library Associations and Institutions (IFLA)** is the global organisation for libraries of all types, with over 1500 members in 150 countries globally. It provides a platform and structure for professional exchange, learning and development, as well as a voice for libraries on the global stage. Among its members, it counts the Library and Information Association of Zambia. More information: www.ifla.org

EIFL (Electronic Information for Libraries) works with libraries to enable access to knowledge in developing and transition economy countries in Africa, Asia Pacific, Europe and Latin America. The EIFL Copyright and Libraries programme advocates for a fair and balanced copyright system, and it supports librarians to become advocates for access to knowledge. In Zambia, EIFL partners with the Zambia Library Consortium (ZALICO), a membership organisation of 28 university, college, polytechnic and special libraries. More information: www.eifl.net

The **Geneva Centre on Knowledge Governance** conducts [research](#) and provides [technical assistance](#) and [teaching](#) from offices in the heart of International Geneva. Our work promotes information justice and knowledge equity within and between countries. The Centre coordinates a network of scholars and research institutes around the world and we provide support to government delegations and non-governmental organisations. More information: <https://knowledgegov.org/>

I. Response to IFRRO and CISAC Observations

In their submission on the Copyright Bill, 2025, the International Federation of Reproduction Rights Organizations (IFRRO) and the International Confederation of Societies of Authors (CISAC) raise many objections that they claim are based on international copyright treaties, but in fact just reflect their preferred policy outcomes.

- At the outset, we note a point of agreement with IFRRO and CISAC. In **comment 5**, they correctly challenge section 22(3)(a) conditioning copyright protection on an author’s “sufficient effort.” Copyright protection should turn on originality, not sufficient effort. However, we disagree with IFRRO/CISAC’s opposition to section 22(3)(b) that requires fixation in material form. Fixation is a standard requirement in many copyright systems. It assists in the management of copyright: since ideas alone are not copyright protected, fixation is a practical measure that helps to identify and locate protected works. *See, e.g.*, U.S. copyright law 17 U.S.C. § 102(a) (“copyright subsists...in original works of authorship fixed in any tangible medium of expression....”).
- In **comment 1**, IFRRO/CISAC call for introduction of the term “reprographic reproduction” that means “reproduction in the form of copies on paper or on a similar medium”. This is unnecessary. The term refers to photocopying, already included in the definition of “reproduction” that means “the making of copies of a work ... in any manner or form”. Rather than highlighting a particular format - copying on paper (an increasingly obsolete technology), the copyright law should be technologically neutral. The other technical changes proposed by IFRRO/CISAC in **comments 2, 3, and 4** similarly are not needed.
- **Comment 6** objects to the statement at the beginning of section 26(1) that the exclusive rights are subject to the exceptions and limitations under Part VI. IFRRO/CISAC claims that this framing reflects an improper hierarchy where “exceptions are the default rule and rights the residual category.” According to IFRRO/CISAC, this could lead to an overly broad reading of exceptions and “contribute to a systemic ‘user-rights’ framing that is inconsistent with established treaty-based principles.” While IFRRO/CISAC are correct that “exclusive rights are the foundation of *protection*,” they are plainly wrong that exclusive rights are the default rule. Rather, the *public domain* is the default rule for information, and international copyright law reflects a narrow departure from that rule when certain criteria are met, *e.g.*, original expression (not facts or ideas) fixed in a tangible form for a set term. Exceptions are carve-outs to the narrow departure from the default rule of the public domain—in other words, an exception to the exception.

In any event, comment 6 is a tempest in a teapot, of interest perhaps to law professors and lobbyists but of no practical impact. The wording of section 26(1) is fine as currently drafted.

- **Comment 9** is yet another hyper-technical criticism of the Bill. IFRRO/CISAC complain that section 47 sets forth the second and third steps of the three-step test (“the use shall not conflict with the normal exploitation of the work...and shall not unreasonably prejudice the legitimate interests of the rights owner”) but omits the first step (“certain special cases”). But this objection ignores the unambiguous manner in which section 47 was drafted. Section 47 provides that “a use of a work...*under this Part* shall be permissible” if it does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate

interests of the rights owner.¹ This Part is Part VI of the Bill dealing with Limitations and Exceptions. That is, Part VI sets forth with great specificity the special cases in which the Bill grants an exception. Accordingly, there is no need for section 47 to repeat that exceptions are permitted only in certain special cases. Indeed, including the redundant language could lead to confusion.

Moreover, it should be noted that the three-step test as it emerged in 1967 (Stockholm Revision Conference) is properly viewed as a directive for legislatures to employ when they are formulating exceptions, rather than as a standard to be applied when a particular exception is exercised in a specific case to a given author, work, and user. How is an individual in Zambia expected to determine whether his exercise of a specific exception conflicts with the normal exercise of the work or unreasonably prejudices the legitimate interests of the rights owner? These are policy matters for a legislature to determine. Including this language in section 47 introduces a level of uncertainty that will discourage the use of the exceptions contained in Part VI. We are aware that some countries include the language of the three-step test in their national copyright laws, but we believe this is an unfortunate practice encouraged by certain interest groups seeking to drive users towards obtaining (unnecessary) licences.

- **Comment 10** addresses the private copying exceptions in sections 48 and 58. IFRRO/CISAC claim that “international copyright standards require that any private copying exception be clearly circumscribed and accompanied by equitable remuneration, in order to comply with the three-step test and to avoid conflict with the normal exploitation of works or unreasonable prejudice to rightsholders.” This claim implies that international copyright treaties mandate remuneration for private copying, but this simply isn’t true. Many jurisdictions permit private copying without remuneration, including African countries such as Nigeria (*see* section 20(1)(a)) and Kenya (*see* Second Schedule, A.1(a)); and countries in the global North such as the United States (*see* 17 U.S.C. § 107). To be sure, some jurisdictions have implemented remuneration systems for private copying, but that is a policy choice that originated in European countries, and is by no means required by any copyright treaty. PACRA’s policy decision to permit private copying in most situations is the correct one for Zambia, and there is no reason to change it at this time.
- **Comment 11** objects to the drafting of the exceptions in section 52, asserting that it will create uncertainty and over-broad application. To the contrary, the redraft proposed by IFRRO/CISAC for section 52(1)(a) will create significant uncertainty. The current text simply establishes an exception for the making of summaries and quotations. As with the three-step test in comment 9, the IFRRO/CISAC redraft imports language from the Berne Convention directed at national legislatures, not individual users. Thus, under the IFRRO/CISAC proposal, a user may make a quotation only if it is “compatible with fair

¹ To this extent, the Zambian proposal is functionally equivalent to Section 32 Thailand Copyright Act, which states:

An act against a copyright work by virtue of this Act of another person which does not conflict with a normal exploitation of the copyright work by the owner of copyright and does not unreasonably prejudice the legitimate right of the owner of copyright shall not be deemed an infringement of copyright.

Subject to paragraph one, any act against the copyright work in paragraph one shall not be deemed an infringement of copyright, provided that the act is each of the followings: (listing permissible purposes).

Available at:

[https://www.ipthailand.go.th/images/26669/2566/laws/COPYRIGHT%20ACT%20B.E.%202537%20\(1994\).pdf](https://www.ipthailand.go.th/images/26669/2566/laws/COPYRIGHT%20ACT%20B.E.%202537%20(1994).pdf)

practice” and only if “its extent does not exceed that justified by the purpose.” Without any guidance on the meaning of these ambiguous terms, an ordinary user would be reluctant to make a quotation.

The proposed redraft for educational uses in section 52(1)(b) and (c) would obligate an educational institution to obtain a licence for certain uses, if a licence was available. While this may reflect IFRRO/CISAC’s desire to maximize their members’ revenue (irrespective of the cost to the education sector), it is not a requirement of international copyright law, nor is it in the best interests of Zambian teachers and students. PACRA’s policy decision to permit the educational uses itemized in section 52(1)(b) and (c) should remain undisturbed.

IFRRO/CISAC call for the elimination of one of the Bill’s most positive new features, the exception for text and data mining (“TDM”) for non-commercial purposes in section 52(1)(d). IFRRO/CISAC assert that the exception would create legal uncertainty, undermine licensing-based solutions, and preempt policy choices that are still evolving internationally. The proposed exception would do nothing of the sort. Because it applies only to TDM for non-commercial purposes, it would in fact be significantly narrower than the TDM regime created by the EU Directive on Copyright in the Digital Single Market (2019), and by copyright law amendments introducing TDM in Japan (2018) and Singapore (2021). It also would be more restrictive than the TDM allowed by courts in the United States. While there is significant discussion internationally about the lawfulness of the ingestion of copyrighted works for the purpose of training generative artificial intelligence models (such as ChatGPT), that discussion centres on commercial uses by some of the wealthiest companies in the world to generate new content such as music, art, books (known as expressive outputs) that risk competing with the ingested works. There simply is no controversy whatsoever about the sort of non-commercial uses allowed by section 52(1)(d) to analyze data such as classifying and identifying patterns in text to advance discoveries in areas such as health, agriculture and climate change (known as non-expressive outputs). *See [here](#)* for information on a WIPO project to advance innovation in Africa through text and data mining and to foster its application across different African institutions.

- **Comment 12** suggests that section 55 concerning public performances by educational institutions be delimited to face-to-face teaching activities so as to ensure “alignment with international practice.” However, other legal systems permit and/or mandate the transmission of works in the course of distance education. The EU Directive on Copyright in the Digital Single Market (2019) requires member states to permit “Use of works and other subject matter in digital and cross-border teaching activities” through the provision of “an exception or limitation ... in order to allow the digital use of works and other subject matter for the sole purpose of illustration for teaching” in the digital environment. *See also* 17 U.S.C. § 110(2). There is no reason for Zambian teachers and students to be at a disadvantage relative to their counterparts in the global North.
- **Comment 13** recommends deletion of section 27 concerning library lending, and instead to establish a new right under which rightsholders would be remunerated for non-commercial lending by public libraries, known as public lending right (PLR). As discussed below, we have our own questions concerning section 27, but we strongly oppose the creation of a public lending right in Zambia. Contrary to the implication of comment 13, the absence of a public lending right does not undermine the core architecture of copyright law. In fact, by respecting the principle of exhaustion (whereby the distribution right is exhausted after the

first sale), it reinforces it. The concept of a public lending right originated in the Nordic countries, and then was introduced in the European Union by the 1992 Directive on Rental and Lending Right. While PLR may be appropriate in wealthy countries with well-resourced libraries, it makes no sense, in our view, in a developing country context. PLR operates as a de facto tax on library lending, and therefore a tax on reading and education. To support local authors and publishers, the government could simply allocate a budget for public libraries to purchase locally produced works. This measure would provide direct support to Zambian authors and publishers, rather than creating a new mechanism with administrative costs and middlemen who would inevitably take a cut of the allocated funds (reducing transparency and democratic oversight over how the monies are spent). See [here](#) for a more detailed discussion of the problems with a public lending right.

II. Recommendations

The Copyright and Related Rights Bill, 2025 contains several positive provisions from the perspective of libraries, education and research, and people with print disabilities. We offer the following technical comments and recommendations to help clarify certain provisions, future-proof the law for technological developments, and more generally to advance access to knowledge for people in Zambia.

- **Exhaustion.** Section 26(1)(b) creates an exclusive economic right of distribution “of a copy of the work to the public by sale, rental, hire, loan or any other similar arrangement.” Section 26(3) then provides that the distribution right “shall not apply to a work that has already been put on the market within the Republic or within or outside the region by, or with the consent of, the copyright owner.” This appears to articulate the exhaustion principle; that is, a copyright owner’s distribution right in a particular copy is exhausted after the first authorized sale of that copy. However, section 26(3) refers to “a work” that has been placed on the market, rather than “a copy of a work” that has been placed on the market. Taken literally, section 26(3) would exhaust the distribution right with respect to all copies of a work once one copy was put on the market. It is unlikely that PACRA intended this result. Accordingly, section 26(3) should be amended to refer to “a copy of a work.”
- **Library lending.** If section 26(3) is intended to establish an exhaustion principle, then sections 27 and 53(3)(b) regarding library lending are confusing and contradictory. Section 27(1) permits a library to lend, for a fee, “a work or a sound recording of a work.” Presumably this should read “*a copy* of a work or a sound recording of a work.” But why is section 27(1) needed when the library already has the right to lend a copy it purchased, with or without a fee, under section 26(3)? Or, is section 27(1) intended to be an exception to the exhaustion principle in section 26(3) when a library lends for a fee? Section 27(3) requires a library to get prior authorization before lending [a copy of] an audio-visual work. Does this apply only if the library is lending the copy of the audio-visual work for a fee? And again, is this meant to be an exception to the exhaustion principle in section 26(3)? Moreover, the relationship between section 27(4), concerning the lending of a sound recording, and section 27(1) is unclear. Furthermore, section 27(6) indicates that a library within an educational institution can lend without the consent of the copyright owner. Undoubtedly this lending is occurring without a fee. If so, doesn’t the exhaustion principle in section 26(3) already permit the library in the educational institution to lend the copies of audio-visual works and sound recordings?

Further obscuring the situation is section 53(3)(b), which permits “a public archive, museum, or library...to lend out [copies of] works...in the collection of the public archive, museum, or library to a natural person.” Isn’t this lending already permitted by the exhaustion principle in section 26(3)? Also, does “public” modify just “archive,” or also “museum” and “library?” Is a library at a public educational institution a public library for purposes of this section?

PACRA should carefully review the intended scope of the exhaustion principle in 26(3) and clarify the provisions relating to library lending accordingly. We urge PACRA to follow the approach of a broad exhaustion doctrine that applies to a lawfully made copy sold anywhere in the world with the copyright owner’s authorization. *See e.g.*, 17 U.S.C. § 109(a). This would obviate the need for special provisions regulating lending by libraries.

- **Fair dealing.** The existing Copyright and Performance Rights Act, 1994, contains fair dealing provisions found originally in the English Copyright Act of 1911, as well as specific exceptions for other uses, including by educational institutions and libraries. The Bill has expanded the specific exceptions in many salutary ways, including for example a provision domesticating the Marrakesh Treaty for persons with print disabilities. However, the Bill has eliminated the fair dealing concept. This is unfortunate, and a missed opportunity. In other former British territories, including Nigeria, Singapore, Canada and Israel, the fair dealing provisions have evolved to closely resemble the more flexible and open provision, known as fair use, that originated in the United States (based on English common law). At the same time, these jurisdictions have expanded their set of specific exceptions. This gives these jurisdictions the best of both worlds. On the one hand, they have the specificity of certain exceptions. On the other hand, they have the flexibility of fair use to accommodate rapid technological change. We recommend that PACRA include a fair dealing provision based on that of Nigeria, simply adding the term “such as” to make the list of enumerated purposes open rather than closed. *See* Copyright Act, 2002 (Nigeria), Sec. 20(1); *see also* Liberia Intellectual Property Act, 2016, § 9.8.
- **Text and Data Mining (TDM).** As noted above, we applaud the inclusion of a TDM exception in section 52(1)(d). An express right to engage in TDM underpins research and development in artificial intelligence (AI), as well as local and international AI collaborations, in support of a key objective of Zambian national policy on science, technology and innovation². However, the provision currently refers to “the processing of an object of rights for purposes of text and data mining, except that the processing of the object shall not be for a commercial purpose.” PACRA likely intended for the language to include “works” as well as “objects of rights.” Thus, the provision should read, “the processing of a work or an object of related rights for purposes of text and data mining, except that the processing of the work or object shall not be for a commercial purpose.”

Further, there are circumstances where the Zambian policy on science and technology may be advanced by permitting text and data mining in joint commercial and non-commercial ventures to support local research in fields such as agriculture, biotechnology, and healthcare. *See, e.g.*, <https://deeplearningindaba.com/>. TDM in these research contexts do not implicate the controversy surrounding the training of large language models for generative AI (that can create works substituting for the works in the training database). There are several

² 2025 National Science, Technology and Innovation Policy Available at: <https://nstc.org.zm/wp-content/uploads/2025/07/2025-National-Science-Technology-and-Innovation-Policy.pdf>

alternatives for amending the Bill to achieve such a research-friendly result. First, as noted in the previous bullet point, PACRA could simply include an open, flexible fair dealing provision similar to Nigeria's. Second, if PACRA decided not to pursue an open fair dealing provision, it could retain subsection 21(1)(1) from the 1994 Act, with the deletion of the following bracketed language: "fair dealing with a work for private study or for the purpose[s] of research [done by an individual for his personal purposes, otherwise than for profit]. Third, the clause in subsection 52(1)(d) excluding commercial uses could be replaced with the following: "except that the processing of the work or object shall not communicate any work to the public, or create market substitutes for, any work or object used." Finally, the Minister could be given the authority to permit text and data mining in situations other than that set forth in section 52(1)(d)³.

- **People with disabilities.** We warmly welcome domestication of the Marrakesh Treaty for persons with print disabilities, and we look forward to Zambia's accession to the Treaty. The Bill domesticates the Marrakesh Treaty in a straightforward manner in section 52(1)(g).⁴ This provision, however, does not explicitly permit the cross-border exchange of accessible format copies, as required by the Treaty. Therefore, the provisions should read, "the reproduction, distribution, importation, exportation, and communication to the public of a lawfully published work or object of related rights in the interests of persons with disabilities in a manner which is directly related to their disability, except that the reproduction, distribution, importation, exportation, and communication to the public shall not be carried out for a commercial purpose."
- **Protecting exceptions from contract terms (contract override).** An increasing share of content is distributed in digital formats (subject to licences), rather than in physical formats (subject to copyright law). These licences often prohibit the making of copies, even copies that are otherwise permitted by copyright exceptions set out in national law. Accordingly, legislatures have begun to incorporate provisions to protect the exceptions in national law by rendering contract terms that purport to limit copyright exceptions null and void. Thus, Nigeria included section 20(3) of the 2022 Copyright Act: "Any contractual term which purports to restrict or prevent the doing of any act permitted under this Act shall be void." A similar provision should be included in the Bill. *See [here](#)* for a more detailed discussion of clauses that prevent contract override.
- **Termination of Assignment.** Section 75 allows a copyright owner to revoke an assignment of rights in the event that the assignee fails to exercise the right. This provision should be broadened to grant the author of a work the unwaivable right to terminate an assignment of copyright a set number of years after the assignment. Authors often enter into unfavourable assignments when they are early in their career due to their unequal bargaining strength with publishers and other distributors. Many countries allow termination of assignments to level the playing field in favor of creators. For example, in Germany, authors who granted exclusive licenses for a flat-rate fee (rather than royalties) can convert those to non-exclusive

³ See Report of the Parliament of Uganda's Sectoral Committee on Legal and Parliamentary Affairs on the Copyright and Neighbouring Rights (Amendment) Bill, 2025, section 4A(2)(4)(a) (Sept. 2025). *See also* section 77(2) of the Copyright and Related Rights Bill, 2025 that permits the Minister to provide, by statutory instrument, for exceptions regarding the circumvention of technological protection measures.

⁴ Note the Marrakesh Treaty was adopted by WIPO member states in 2013 (not 2016, as indicated in the memorandum accompanying the Bill). The Treaty entered into force in 2016.

licenses after 10 years, and they have a right to terminate the assignment if a work is not appropriately exploited within two years of signing. In Austria, authors can reclaim the right to reproduce and distribute their work in a "complete edition" once 20 years have passed since the end of the year the work was first distributed. In the US, authors may reclaim their rights 35 years after an assignment. South Africa's Copyright Amendment Bill [B13F-2017], approved by both Houses of Parliament in 2024, includes a mandatory 25-year limit on copyright assignments for literary and musical works.

END