

ENFORCEMENT BULLETIN



KENYA COPYRIGHT BOARD



ISO 9001

BUREAU VERITAS
Certification



008



CONTENTS

PART I	4
Background and introduction	4
Objectives of the Enforcement Guide	4
Vision and Mission.....	5
The Mandate of Kenya Copyright Board	5
PART II	6
General Principles of Copyright Law	6
Copyright and the Economy of Kenya	6
Copyright in the Kenya Constitution	7
PART III	8
Ownership of Copyright Works	8
Laying of Complaints	8
Investigation and Arrest	9
The Role of the Kenya Copyright Board, the Police and Collective Management Organisations in Enforcement of Copyright Act	9
PART IV	11
Carrying identification document	11
Search seizure and inventory	11
Security of exhibits	12
Charges to lay	12
Prosecution	12
Destruction of exhibits	12
Remission of fines	13
ANNEX 1: Scenario	14
ANNEX 2: Sample charges based on the scenario	15
ANNEX 3: Inventory of seized goods	21

PART I

BACKGROUND AND INTRODUCTION

Enforcement of Copyright Law is a continuing challenge to the Kenya Copyright Board (KECOBO) and the Kenya Police. This is due to the specialist nature of the cases and the difficulty of proving entitlement in a non-registration system. These difficulties are exacerbated by the rights holders who send agents to various towns to enforce on their behalf. The 'Copyright monitors' are quick to 'settle cases' and act in an extortionist manner. In many instances a lot of complaints follow their visits.

OBJECTIVES OF THE ENFORCEMENT GUIDE

KECOBO intends that this document will serve as a quick guide for Police, Prosecutors and other enforcement agents by:

- Offering a simple introduction to Copyright law and the constitutional context
- Assisting the police identify relevant complainants and avoid misuse of police resources by imposters and extortionists
- Setting out minimum standards of enforcement of Copyright cases
- Assisting in framing of charges
- Highlighting the fact that copyright is property right and its role in the economy.
- Offering standardised inventory form and a uniform procedure for conducting investigations and charging accused persons

For that purpose the guide has been set out to cover the following subjects:

- The mandate of Kenya Copyright Board (KECOBO)
- General Principles of Copyright Law
- Copyright and the economy
- Copyright and the constitution
- Role of the Kenya Copyright Board, the Police and Collective Management Organisations in Enforcement of Copyright Act
- Ownership of Copyright
- Complainants in a Copyright Case
- Investigations and arrest
- Inventory and drafting of charges
- Offences under the Copyright Act
- Copyright Act extract of offences
- Sample charges
- Important contacts
- Some Dos and Don'ts

THE KENYA COPYRIGHT BOARD

VISION

To be a world class agency for Administration of copyright and related rights

MISSION

To protect and promote copyright in Kenya for socioeconomic and cultural development

KECOBO is an ISO 9001; 2008 certified organisation. KECOBO is managed by a stake-holders Board of Directors consisting of 18 members as set out under Section 6 of the Act. KECOBO is organised into specialised departments for delivery of its mandate and targets.

THE MANDATE OF KENYA COPYRIGHT BOARD

The Copyright Act (Cap. 130, Laws of Kenya) is the law dealing with copyright issues in Kenya. It was enacted in 2001. The Act established Kenya Copyright Board under Section 3. KECOBO is established under the State Law Office and reports to the Attorney General who is the 'Minister' (now Cabinet Secretary) for the purpose of the Act.

KECOBO holds the following mandate:

- Implementation of laws and international Treaties to which Kenya is party
- Enforce and prosecute copyright cases
- License and supervise Collective Management Organisations
- Devise training on copyright matters
- Administer the Copyright Act and ensure its continuous improvement
- Sensitise the public on copyright matters
- Maintain a databank of authors
- Administer all copyright and related rights matters as per the Act.

PART II

GENERAL PRINCIPLES OF COPYRIGHT LAW

Copyright is a sub-type of Intellectual Property rights concerned with the rights of authors. Copyright involves multiple exclusive rights held by authors. The Copyright Act is influenced by the Berne Convention for the Protection of Literary and Artistic Rights; the WIPO Internet Treaties (WIPO Copyright Treaty [WCT] and WIPO Performances and Phonograms Treaty [WPPT]) and Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement. For example as a result of the Berne Convention, no formalities are required to enjoy copyright. Furthermore authors of member states of Berne Union and TRIPS Agreement enjoy equal treatment as authors of Kenya.

Copyright covers;

- Books, software and all published material (literary works)
- Paintings, drawings, architectural drawings, sculpture, photographs, cartoons and graphic designs (artistic work)
- Theatre performances, synchronised dances (dramatic works)
- Movies and films (audio-visual works)
- Sound recordings
- Broadcasts (Section 22 of the Copyright Act)

The average term of a copyright is the life of the author and fifty years after his death. The respective durations are set out under Section 23 of the Copyright Act.

Copyright consists of two types of rights to the author namely economic and moral rights.

Economic rights: These include the right of reproduction; adaptation; translation; sale, importation; rental etc that earns the author income when exploited.

Moral rights: These include the right of acknowledgement of authorship; right to protect the integrity of a work and the right to control the publication.

Infringement of the author's economic rights results in offences under the Copyright Act (Section 35). Infringements of author's moral rights do not give rise to any offence under the Act.

COPYRIGHT AND THE ECONOMY OF KENYA

According to the findings of the WIPO/KECOBO study on "The Contribution of Copyright to the Economy", Copyright contributes 5.3% to the Gross Domestic Product (GDP) of Kenya with core Copyright industries contributing 4.4 %. The same industry employs over 300,000 people directly.

COPYRIGHT IN THE KENYA CONSTITUTION

The Constitution of Kenya 2010 has placed specific obligation on the Government on account of Intellectual Property Rights.

Article 11(2) of the Constitution states as follows:

The State shall:-

- a. Promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage;
- b. Recognise the role of science and indigenous technologies in the development of the nation; and
- c. Promote the intellectual property rights of the people of Kenya

Article 40(5) Protection of right to property states as follows:

- (5) The State shall support, promote and protect the intellectual property rights of the people of Kenya.

The Constitution has therefore explicitly defined the term 'property' to include Intellectual Property Rights.

It is therefore the duty of the Government of Kenya to provide a good environment for Intellectual Property to thrive. Intellectual Property cannot develop without enforcement.

The Vision 2030 recognises these and obliges the State to provide stricter enforcement in the area of music and performing arts. As law enforcers therefore it is now a constitutional duty to enforce against Intellectual Property Rights (including copyright) infringements.

PART III

OWNERSHIP OF COPYRIGHT WORKS

Section 31 of the Copyright Act identifies the 'Author' as the first owner of the Copyright work. However, in the case of work produced by an employee or commissioned agent, the employer or the commissioner will be the owner unless there is an agreement to the contrary.

As indicated in part II above, copyright consists of many rights. For an author to exploit all those rights; authors can transfer by either a license or assignment some or part of their rights for remuneration. In those circumstances, ownership but not authorship may change.

In general, authorship and ownership is as follows:

WORK	AUTHOR	OWNER
Painting	Painter	Painter unless commissioned
Sound recording	Producer	The Producer (some artists are also producers)
Movie (audiovisual work)	Person making arrangement for its production i.e. producer	Producer or person who made arrangements for its production
Book	Author/writer	Publisher unless self published
Software	Programmer(s)	Computer programmer or his employer or commissioner
Sculpture	Sculptor	Sculptor unless commissioned
Cartoon or graphics	Illustrator/graphic designer	Author or his employer or commissioner
Photograph	Photographer	Photographer or his employer or commissioner
Broadcast	Broadcaster	Broadcaster

LAYING OF COMPLAINTS

Under Section 42 of the Copyright Act, offences under the Copyright Act are cognizable offences. However arrest in the absence of a Copyright owner complainant can be problematic and should be avoided. This is because the offences by their nature involve infringement of property in copyright resulting in unauthorised products getting to the market in competition with authorised goods. Evidence and knowledge of similarity or copying critical for reaching a decision is held by the copyright owner. No court can convict without that evidence.

Furthermore, copyright is a private right and state or its enforcement agents are under no legal obligation to initiate investigation and act on infringement on its own motion. The Board therefore recommends that unless the offence is one under Section 36 (5), the person indicated as the owner of the infringed rights is the right person to lay a complaint. He may be represented by an agent. The State through Kenya Copyright Board can also be a complainant for the offence set out under Section 36 (5) of the Act.

INVESTIGATION AND ARREST

The Role of the Kenya Copyright Board, the Police and Collective Management Organisations in Enforcement of Copyright Act

Enforcement of Copyright Law is one of the core mandates of the Board under Section 3 of the Copyright Act. Under Section 39 of the Copyright Act, the Board is required to appoint Copyright Inspectors to conduct investigations. At the moment several police officers attached to the Board have been formally appointed through the Kenya Gazette as Inspectors under this provision. But given this personnel limitation, they have and will continue to work closely with Police Officers based at various stations wherever they operate.

In addition Section 39 (2) of the Act states that any police officer may perform functions of a Copyright Inspector under the Act.

Collective Management Organisations like Music Copyright Society of Kenya (MCSK), Kenya Association of Music Producers (KAMP) have no Enforcement role under the Copyright Act. KECOBO therefore advises the Police against the arrest of business owners who fail to take public performance licenses as proving the offence under Section 38 (2) of the Act is problematic given the manner it is worded.

Section 40 empowers the Copyright Inspector to enter and search any premises within which infringement is suspected to be on going. Upon such entry, the Police Officer or the Copyright Inspector may;

- Inspect articles appearing to be works
- Plant or equipment used or intended to be used for production or manufacture the work
- Packages or container used or intended to contain a copyright work,
- Seize any article suspected of being infringing and documents that may be required at the proceedings;
- Issue an inventory of seized goods/documents specifying items as soon as practicable

Under Section 42 of the Copyright Act, police are empowered to arrest without warrant any person suspected of committing an offence under the Act. This provision reinforces the general police power to enforce any law under Section 14 of the Police Act.

The Copyright Act highlights two major offenses namely infringement of copyright work and authentication of copyright work.

- a. Infringement of copyright works - as defined under Section 35 of the act this arises where a person other than the copyright owner, licensee or assignee, makes for sale, distributes imports or has in his possession contrivances used for making infringing copies.

Possession of copies for private or domestic use is not an offence (Section 38 (3) of the Act. The copyright owner is the primary custodian of his right, hence the duty to report to the Board any acts of infringement against his works.

- b. Authentication of copyright works - these offences on the on the other hand, arise where a copyright owner, licensee or assignee offers for sale any copyright works without authentication stickers, as stipulated in Section 36 of the copyright work. The police are the enforcers of this section and bestowed with powers to confiscate any works (sound recordings and movies) without the authentication device.

PART IV

The Board would like to recommend the following as best practices for the purpose of enforcement:

CARRYING IDENTIFICATION DOCUMENT

Inspectors working for the Board must always display their identity cards during enforcement action even while accompanied by uniformed police officers. This displays professionalism and distinguishes the team from 'monitors' who plague the sector.

SEARCH SEIZURE AND INVENTORY

Police and Copyright Inspectors must always conduct their searches diligently so that all material evidence is gathered. The following are some items critical for prosecution of copyright cases:

- The infringing copies
- The 'master' discs and tools used for making the infringing copies
- Licenses issued by local authorities
- Documents e.g. receipts books, books of account, customer lists etc.

These items must be sequentially listed and described for ease of identification in an inventory of seized goods. The number of items seized must be indicated on the inventory. No form is prescribed under the Act but in all instances a good inventory must contain

- Name of the shop/person from whom/ where recovery is made
- Name of shop attendant
- The items seized with sufficient detail
- Date and time
- Signed by the arresting/investigating officer
- Signed by the shop owner, if willing

This enables prosecution to directly link exhibits to the accused person.

KECOBO recommends that Police Officers take and remain in charge of the search, seizure and arrest in a copyright investigation.

Similarly, it is the duty of the Police Officer or Copyright Inspector to prepare suitable charges to avoid cases of defective charges being prepared mostly by the so called copyright monitors.

SECURITY OF EXHIBITS

Exhibits must always be kept secure until produced in court and avoid pilferage and tampering. Under the law the investigating officer is the custodian of exhibits. In cases investigated by KECOBO appointed Copyright Inspectors, exhibits will remain in their custody. Inventory of seizure is a key exhibit to account for seized items in every case. A sample inventory of seizure is attached for guidance.

CHARGES TO LAY (SEE PART III ABOVE AND ANNEX 2 BELOW)

Under the Copyright Act, the following acts constitute offences;

- Making for sale or hire [Section 38 (1)(a)]
- Selling, letting or offering for sale [Section 38 (1)(b)]
- Distribution [Section 38 (1)(c)]
- Being in possession [Section 38 (1)(d)]
- Importation of infringing copies [Section 38 (1)(e)]
- Possession of tools of infringement [Section 38 (1)(f)]
- Causing public performance [Section 38 (2)]
- Selling or offering for sale unauthenticated music and movies [Section 36 (5)]

NB: Please consult the Annex for sample charges for each of the above cases.

PROSECUTION

Section 43 of the Act provides that the Attorney General (now Director of Public Prosecution [DPP]) may appoint Prosecutors for copyright purposes. This provision should not however be a legal impediment as to prevent cases of copyright from being prosecuted by Police Prosecutors under their delegated powers. KECOBO will provide any support or advice if consulted by Police Prosecutors dealing with a Copyright case.

DESTRUCTION OF EXHIBITS

Section 38 (8) of the Act provides that goods considered to be infringing or articles used for making infringing copies seized under the Act be forfeited whether or not the accused is convicted.

The modes of disposal provided under the law are:

- Given to the complainant (delivery up)
- Destroyed
- Or otherwise dealt with.

The principle behind the disposal is that such goods are removed from the market/channels of commerce and this should be borne in mind where the third option is considered by the court. In some instances involving books, courts have ordered them to be offered to prison libraries for their use. But in any case the goods should and cannot be released to the accused person.

REMISSION OF FINES

According to Section 38(10) of the Copyright Act, 2001 half of any fines due from the cases under Act are payable to the Kenya Copyright Board. Also see the letter by the Registrar of the High Court addressing this matter.

DOS AND DON'TS

- Avoid working with Copyright monitors or other persons posing as KECOBO staff without proper identification and background check
- Involve complainant in raids and accounting for exhibits
- Keep abreast of the changes in the Copyright Law

ANNEX 1:

SCENARIO:

A complaint has been received by Copyright Inspectors that a shop situated at Embassy House Exhibition, along Harambee Avenue in Nairobi within Nairobi County called Sacred Cow Ltd, is displaying and offering for sale works suspected to be infringing copies of licensed musical products. The Copyright Inspectors accompanied by staff of the complainant Kiratu Productions spring into action to attend to this complaint. On arriving at the Sacred Cow shop, they identify themselves and proceed to enquire who the owner of the shop is. The inspectors then find the following musical works, which according to the complaint lodged, are the infringing copies:- 20 copies of 'Smart Love', 60 copies of 'Hard Life', 200 copies of 'Paradise Gained', 1000 covers of 'Paradise Gained', 600 assorted CDs and VCDs that have no KECOBO stickers (comprising of Nigerian and Hollywood movies). On a further search of the premises, the Inspectors find 3 CD Duplicators and 3 parcels containing 200 CDs of 'How Life' and 300 copies of 'Paradise Gained', addressed to Mr. Peter Kuria of Kilifi, Odongo Productions, Kisumu and Otti & Sons Mombasa, respectively.

In an adjacent shop, as the Inspectors are leaving, they are confronted by Mr. Big Show of Biggie Enterprises Dealers. In the process of subduing him, they enter his shop and discover 250 copies of Microsoft Office software and 30 copies of Microsoft Office 7 software. They also stumble upon a haul of county maps numbering six hundred (600). In one of the rooms in Mr. Big Show's shop, they come across what appears to be a 'broadcast studio'. They find out that from this 'studio', Mr. Big Show has been supplying the residential flats within the building with the Zuku broadcast signal. A total of 20 decoders and 15 smart cards belonging to Zuku Ltd are discovered and seized.

While still at the building, Senior Copyright Inspector Omondi receives a phone call from a renowned publisher, Wilproda, complaining that her book 'The Ogre and the Daughter', was being pirated in the same building where they were conducting the raid. The Inspectors act swiftly and discover that the piracy of the set book was being done in a nearby shop called 'Kiriamiti Books', belonging to Wanjau Kiriamiti. From the City Council license displayed on the shop, the proprietor had been licensed to deal in the business of photocopying. A total of 1,000 copies of the set book enroute to Osa Vinya Bookshop in Machakos were seized. Book covers estimated to be about 30,000 in number and 5,000 copies of the set book that were in the process of being bound were also confiscated.

Required:

Prepare an inventory of the seized goods and a charge sheet(s) preferring charges against the persons arrested.

ANNEX 2:

Sample Charges Based On The Annex 1 Scenario
(Please choose and adapt the relevant charges below).

COUNT ONE

BEING IN POSSESSION OF INFRINGING COPIES CONTRARY TO SECTION 38 (1)(d) AS WITH SECTION 38 (5) OF THE COPYRIGHT ACT 2001.

PARTICULARS OF THE OFFENCE

SACRED COW LIMITED: On the 10th day of October 2012 at Sacred Cow Limited along Harambee Avenue in Nairobi within Nairobi County, jointly with others not before court was found in possession otherwise than for his private and domestic use twenty (20) infringing copies of musical work titled 'Smart Live' by Kiratu while the copyright subsists in the name of Kiratu Productions.

COUNT TWO

BEING IN POSSESSION OF INFRINGING COPIES CONTRARY TO SECTION 38 (1)(d) AS WITH SECTION 38 (5) OF THE COPYRIGHT ACT 2001.

PARTICULARS OF THE OFFENCE

SACRED COW LIMITED: On the 10th day of October 2012 at Sacred Cow Limited along Harambee Avenue in Nairobi within Nairobi County, jointly with others not before court was found in possession otherwise than for his private and domestic use sixty (60) infringing copies of musical work titled 'Hard Life' by Kiratu while the copyright subsists in the name of Kiratu Productions.

COUNT THREE

BEING IN POSSESSION OF INFRINGING COPIES CONTRARY TO SECTION 38 (1)(d) AS WITH SECTION 38 (5) OF THE COPYRIGHT ACT 2001.

PARTICULARS OF THE OFFENCE

SACRED COW LIMITED: On the 10th day of October 2012 at Sacred Cow Limited along Harambee Avenue in Nairobi within Nairobi County, jointly with others not before court was found in possession otherwise than for his private and domestic use two hundred (200) infringing copies of musical work titled 'Paradise Gained' by Kiratu while the copyright subsists in the name of Kiratu Productions.

COUNT FOUR

BEING IN POSSESSION OF CONTRIVANCES USED OR INTENDED TO BE USED FOR THE PURPOSE OF INSTALLING INFRINGING SOFTWARE CONTRARY TO SECTION 38 (1)(f) AS READ WITH SECTION 38 (4) OF THE COPYRIGHT ACT 2001.

PARTICULARS OF THE OFFENCE

SACRED COW LIMITED: On the 10th day of October 2012 at Sacred Cow Limited along Harambee Avenue in Nairobi within Nairobi County, jointly with others not before court was found in possession one thousand (1000) CD covers titled 'Paradise Gained', Three (3) CD duplicators being contrivances used or intended to be used for the purpose of making Compact Disks and audiovideo compact disks while the copyright subsists in the name of Kiratu Productions.

COUNT FIVE

OFFERING FOR SALE COPYRIGHT WORKS WITHOUT AUTHENTICATION DEVICE CONTRARY TO SECTION 36 (5) AS READ WITH SECTION 36 (6) OF THE COPYRIGHT ACT 2001.

PARTICULARS OF THE OFFENCE

SACRED COW LIMITED; On the 10th day of October 2012 at Sacred Cow Limited along Harambee Avenue in Nairobi within Nairobi County, jointly with others not before court were found offering for sale one thousand three hundred eighty (1380) audiovisual/audio compact disks on which the Kenya Copyright Board Authentication Device stickers were not applied.

COUNT SIX

BEING IN POSSESSION OF INFRINGING COPIES CONTRARY TO SECTION 38(1)(d) AS WITH SECTION 38 (5) OF THE COPYRIGHT ACT 2001.

PARTICULARS OF THE OFFENCE

WANJAU KIRIAMITHI: On the 10th day of October 2012 at Kiriamithi Book Shop along Harambee Avenue in Nairobi within Nairobi County, jointly with others not before court was found in possession otherwise than for his private and domestic use one thousand (1000) infringing copies of books titled 'The Ogre and Daughter' by Winfroda while the copyright subsists in the name of Winfroda Publishers.

COUNT SEVEN

BEING IN POSSESSION OF CONTRIVANCES USED OR INTENDED TO BE USED FOR THE PURPOSE OF INSTALLING INFRINGING SOFTWARE CONTRARY TO SECTION 38 (1)(f) AS READ WITH SECTION 38 (4) OF THE COPYRIGHT ACT 2001.

PARTICULARS OF THE OFFENCE

WANJAU KIRIAMITI: On the 10th day of October 2012 at Kiriamithi Book Shop along Harambee Avenue in Nairobi within Nairobi County, jointly with others not before court was found in possession Thirty thousand covers titled 'The Ogre and Daughter', Five Hundred texture of the book 'The Ogre and Daughter' being contrivances used or intended to be used for the purpose of making book while the copyright subsists in the name of Winfroda Publishers.

COUNT EIGHT

BEING IN POSSESSION OF INFRINGING SOFTWARE COPIES CONTRARY TO SECTION 38 (1)(d) AS WITH SECTION 38 (5) OF THE COPYRIGHT ACT 2001.

PARTICULARS OF THE OFFENCES

BIG SHOW: On the 1st day of October 2012 at Biggie Enterprise shop along Harambee Avenue in Nairobi within Nairobi County, jointly with others not before court was found in possession of two hundred and fifty (250) Microsoft Office software and thirty (30) infringing Microsoft Office 7 software while the copyright subsists in the name of Microsoft Corporation.

COUNT NINE

BEING IN POSSESSION OF INFRINGING COUNTY MAP COPIES CONTRARY TO SECTION 38 (1)(d) AS READ WITH SECTION 38 (5) OF THE COPYRIGHT ACT 2001.

PARTICULARS OF COUNT NINE'S OFFENCE

BIG SHOW: On the 1st day of October 2012 at Biggie Enterprise shop along Harambee Avenue in Nairobi within Nairobi County, jointly with others not before court was found in possession of six hundred (600) infringing county maps while the copyright subsists in the name of Nairobi Maps Limited.

COUNT TEN

DISTRIBUTING INFRINGING BROADCAST SIGNAL CONTRARY TO SECTION 38 (1) (c) AS READ WITH SECTION 38 (4) OF THE COPYRIGHT ACT 2001 CAP 130 LAWS OF KENYA.

PARTICULARS OF THE OFFENCE

BIG SHOW: On the 1st day of October 2012 at Biggie Enterprise shop along Harambee Avenue in Nairobi within Nairobi County, jointly with others not before court, was found distributing infringing Zuku TV broadcast signal while the copyright subsists in the name of Zuku Kenya Limited.

COUNT ELEVEN

BEING IN POSSESSION OF CONTRIVANCES USED FOR THE PURPOSE OF RECEIVING AND TRANSMITTING INFRINGING BROADCAST SIGNAL CONTRARY TO SECTION 38 (1)(f) AS READ WITH SECTION 38 (4) OF THE COPYRIGHT ACT 2001.

PARTICULARS OF THE OFFENCE

BIG SHOW: On the 1st day of October 2012 at Biggie Enterprise shop along Harambee Avenue in Nairobi within Nairobi County, jointly with others not before court, was found in possession of twenty (20) decoders and fifteen (15) smart cards for the purpose of distributing infringing Zuku TV broadcast signal while the copyright subsists in the name of Zuku Kenya Limited.

HERE ARE EXTRACTS OF THE OFFENCE SECTIONS UNDER THE COPYRIGHT ACT - (CAP 130, LAWS OF KENYA)

36. (1) Every sound and audiovisual recording made available to the public by way of sale, lending or distribution in any other manner to the public for commercial purposes in Kenya shall have affixed on it an authentication device prescribed by the Board.
36. (2) The Board shall authenticate copyright works according to all required documents furnished to it by the applicant for that purpose and shall issue an approval certificate in the prescribed form to the applicant for authority to purchase an authentication device.
36. (3) The authentication device shall be issued to an applicant upon proof that the applicant has been authorised by the copyright owner to manufacture, reproduce, sell, import, rent or otherwise distribute the work.
36. (4) The authentication device shall be affixed to each copy of the copyright work made or published by the applicant.
36. (5) No person shall sell or exhibit for sale any copyright works that require an authentication device in any form without an authentication device affixed thereto pursuant to subsection (4).
36. (6) Any person who knowingly sells or offers for sale any copyright work that require an authentication device without an authentication device affixed thereto is guilty of an offence and is liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding four years, or to both.
36. (7) Any work requiring an authenticating device and which is sold or exhibited for sale without the authentication device shall be presumed to be an infringing copy.

36. (8) Any person who, without the permission of the Board ²
- (a) is found to be in possession of or to have reproduced, a security device; or
 - (b) is found to be in possession of any machine, instrument or contrivance intended to be used to produce or reproduce a security device, shall be guilty of an offence and liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding ten years, or to both.
38. (1) Any person who, at a time when copyright or the right of a performer subsists in a work-
- (a) makes for sale or hire any infringing copy; or
 - (b) sells or lets for hire or by way of trade exposes or offers for sale any infringing copy; or
 - (c) distributes infringing copies; or
 - (d) possesses otherwise than for his private and domestic use, any infringing copy; or
 - (e) imports into Kenya otherwise than for his private and domestic use any infringing copy; or
 - (f) makes or has in his possession any contrivance used or intended to be used for the purpose of making infringing copies, shall, unless he is able to prove that he had acted in good faith and had no reasonable grounds for supposing that copyright or the right of a performer would or might thereby be infringed, be guilty of an offence.
38. (2) Any person who causes a literary or musical work, an audio-visual work or a sound recording to be performed in public at a time when copyright subsists in such work or sound recording and where such performance is an infringement of that copyright shall be guilty of an offence unless he is able to prove that he had acted in good faith and had no reasonable grounds for supposing that copyright would or might be infringed.
38. (3) For the purposes of paragraphs (a) to (f) of subsection (1), any person who has in his possession, custody or control two or more infringing copies of a work in the same form, shall, unless the contrary is proved, be presumed to be in possession of or to have imported such copies otherwise than for private and domestic use.
38. (4) Any person guilty of an offence under paragraph (a), (c), (e) or (f) of subsection (1) shall be liable to a fine not exceeding four hundred thousand shillings or to imprisonment for a term not exceeding ten years or to both.
38. (5) Any person guilty of an offence under paragraph (b) or (d) of subsection (1) shall be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.
38. (6) A person convicted of an offence under this section shall be liable –
- (a) in the case of a first conviction, to a fine not exceeding four hundred thousand shillings, or to imprisonment for a term not exceeding six years, or to both; and
 - (b) in any other case, to a fine not exceeding eight hundred thousand shillings, or to imprisonment for a term not exceeding ten years, or to both.

38. (7) Any person guilty of an offence under subsection (2) shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding four years, or to both.
38. (8) The court before which a person is charged with an offence under this section, shall whether such person is convicted of the offence or not, order that any article in his possession which appears to the court to be an infringing copy, or to be an article used or intended to be used for making infringing copies, be destroyed or delivered up to the owner of the copyright in question or otherwise dealt with as the court may think fit.
38. (9) No prosecution for an offence under this section shall be instituted-
- (a) After the expiration of the period of three years immediately following the date of the alleged offence; and
 - (b) except before the High Court or a Resident Magistrate's Court.
38. (10) One half of all fines imposed and recovered by a competent court in respect of the contravention of any of the provisions of this Act or of any regulations made thereunder shall be paid into the revenues of the Board and the other half shall be paid into the general revenues of Kenya.

Reproduced verbatim from the website: www.kenyalaw.org

ANNEX 3:

Inventory Of Seized Goods

OB. NO: _____

DATE: _____

TIME OF SEIZURE: _____

PLACE OF SEIZURE: _____

S/NO	ITEM NAME	NUMBER	DESCRIPTION

NAMES AND SIGNATURES OF THE ARRESTING OFFICER(S):

PROPRIETOR/ MANAGER/SHOP ATTENDANT/PERSON(S) PRESENT IN THE PREMISES:

NAME AND SIGNATURE OF THE COMPLAINANT(S)/WITNESS(ES):

For further information on enforcement please contact:

Senior Sergeant Ephraim Ndiritu

Hotline Telephone No.: 0727 – 371241

Email: info@copyright.go.ke or comments@copyright.go.ke

For further information please contact:

The Executive Director

Kenya Copyright Board
5th Floor - NHIF Building
Ragati Road/Ngong Road
Tel: +254-020-2533869/59
Email: info@copyright.go.ke
Website: www.copyright.go.ke
Twitter: @KenyaCopyright
Facebook: KenyaCopyrightBoard



KENYA COPYRIGHT BOARD

in support of

