

SPECIAL ISSUE

Kenya Gazette Supplement No.

(Legislative Supplement No.)

LEGAL NOTICE NO.

THE COPYRIGHT ACT

(No. 12 of 2001)

COLLECTIVE MANAGEMENT ORGANIZATIONS REGULATIONS 2018

ARRANGEMENT OF REGULATIONS

Regulation

PART I—PRELIMINARY

1—Citation.

2—Interpretation.

PART II—REGISTRATION OF COLLECTIVE MANAGEMENT ORGANIZATIONS

3—Application for Registration of a Collective Management Organization.

PART III— COLLECTIVE MANAGEMENT ORGANIZATIONS

4—General obligations of Collective Management Organizations in relation to right holders.

5—Particular obligations of Collective Management Organizations in relation to right holders.

6—Membership rules of Collective Management Organizations.

- 7—Collective Management Organizations and their members.
- 8—General meeting of Collective Management Organizations.
- 9—Supervisory function.
- 10— Management.
- 11—Collection and use of rights revenue.
- 12—Deductions.
- 13—Distributions of amounts to right holders.
- 14—Rights managed under representation agreements.
- 15—Deductions and payments in representation agreements.
- 16—Licensing.
- 17—Users’ obligations.
- 18—Information provided to other Collective Management Organizations.
- 19—Information provided to right holders, other Collective Management Organizations and users on request.
- 20—Disclosure of information to the public.

PART IV— FILING OF ANNUAL REPORTS AND AUDITED ACCOUNTS BY COLLECTIVE MANAGEMENT ORGANIZATIONS

- 21—Annual reports and audited accounts.

PART V— DISPUTE RESOLUTION AND ENFORCEMENT

- 22—Complaints procedure.
- 23—Alternative dispute resolution procedures.
- 24—Right of right holders in relation to a breach of regulation 4.
- 25—Monitoring compliance.
- 26—Evidence of non-compliance.

27—Power to request information

28.—Compliance notice.

29—Financial penalties for non-compliance.

30—Financial penalties procedure.

31—Appeals.

32—Recovery of a financial penalty.

PART V—CONSEQUENTIAL AMENDMENTS TO THE COPYRIGHT REGULATIONS, 2004

33—Amendment of the Copyright Regulations, 2004.

SCHEDULE

THE COPYRIGHT ACT

(No. 12 of 2001)

IN EXERCISE of the powers conferred by section 49 of the Copyright Act, 2001, the Attorney General makes the following Regulations—

THE COPYRIGHT (COLLECTIVE MANAGEMENT) REGULATIONS, 2018

PART I- PRELIMINARY

Citation. **1.** These Regulations may be cited as the Copyright (Collective Management) Regulations, 2018.

Interpretation. **2.**(1) In these Regulations—

“Act” means the Copyright Act, 2001;

“general meeting” means the annual general meeting or the special general meeting through which members of the Collective Management Organization participate and exercise their membership rights;

“management fees” means the amounts charged, deducted or offset by a collecting Organization from rights revenue or from any income arising from the investment of rights revenue in order to cover the costs of its management of copyright or related rights;

“member” means a right holder or an entity representing right holders, including other Collective Management Organizations and associations of right holders, fulfilling the membership requirements of the Collective Management Organization and admitted by it;

“non-distributable” in relation to amounts due to right holders, is construed in accordance with Regulation 13(9);

“proxy” has the meaning assigned to it under the Companies Act, 2015;

“representation agreement” means an agreement between Collective Management Organizations whereby one Collective Management Organization mandates another Collective Management Organization to manage the rights it represents;

“rights revenue” means income collected by a Collective Management Organization on behalf of right holders, whether deriving from an exclusive right, a right to remuneration or a right to compensation;

“royalty” means compulsory payment to a right holder for the use of his or her copyright works at an agreed rate;

“user” means a person who is carrying out acts subject to the authorization of right holders, remuneration of right holders or payment of compensation to right holders.

PART II-REGISTRATION OF COLLECTIVE MANAGEMENT ORGANIZATIONS

- Application for registration of a Collective Management Organization.
- 3. (1)** An application for registration of a Collective Management Organization under section 46 (2) of the Act shall be made on Form No. CMO 01 accompanied by the following documents –
- (a) a certified copy of the certificate of registration as a company limited by guarantee and incorporated under the provisions of the Companies Act;
 - (b) a certified copy of a Organization’s Memorandum and Articles of Association;
 - (c) where applicable, a certified copy of the Organization’s annual return filed with the Registrar of Business Services showing the corporate structure of the Organization during the period of January to December of the previous year;
 - (d) where applicable, audited accounts of the Organization for the five years preceding the date of its application for registration as a Collective Management Organization under the Act and these Regulations;
 - (e) a full list of the names and addresses of all the members of the Organization accompanies by their signature and valid identification documents; and
 - (f) any other document or information that the Board may require the Organization to produce.
- (g) a detailed report of its operations during the year preceding the application.
- (h) certified copies of the licenses/deeds authorizing management of the rights
- (i) a business plan showing financial infrastructure and personnel capacity for collection and distribution of the royalties

(j) Where no Collective Organization exists in respect to certain category of rights, or the license for a Collective Management Organization in the category has been revoked, the Kenya Copyright Board shall through a public notice in a newspaper with largest circulation invite fresh applications. Where more than one organization has applied for the same class of works, the Board shall evaluate each application separately and compare them.

(k) the application for renewal of registration shall be made at least three months prior to the expiry of the subsisting license. The Collective Management Organizations shall be required to submit ;

(i) Certified copy of the certificate of incorporation.

(ii) Certified copy of the memorandum and Articles of Association.

(iii) Statement of any changes made to the Articles and memorandum of Association during the year

(iv) Certified copies of the audited accounts for the year preceding application.

(v) The organizational structure of the Collective Management Organization and the names and qualifications of the senior management

(vi) Any changes in the senior management and reasons thereof.

(vii) A statement of the amount of money collected and distributed as royalties in the year preceding the application.

(viii) The list of their members and national Identity card/Passport details.

(ix) A detailed report of its operations during the year preceding the application.

(x) A sample of the documents of authorization of the relevant rights by the members

(xii) Where there is a single applicant for a Collective Management Organization License and the application does not fulfill some of the requirements, the Board may waive the requirement if it deems that it shall not impact on the effectiveness of the Organization. In those circumstances, the Collective Management Organization shall be required to make up the requirements during the subsistence of the license so issued.

(2) The Kenya Copyright Board in considering whether the collective management Organization has the capacity to collect and distribute the royalties shall in addition take the following factors into account:-

(a) Whether there is demonstrated integrity, transparency and accountability in collection and distribution of the royalties.

(b) Whether the Collective Management Organization adheres to National values and principles of governance provided for under Article 10 of the

constitution of Kenya

(c) The particulars of the directors and their antecedents

(d) Whether membership is fully representative of the class that it claims to represent, taking into account adherence to the standard gender rules.

(e) Whether the administrative costs are as a matter of policy minimal. The administrative costs shall not exceed 30% of the royalties collected.

(f) Whether the royalties are regularly and properly distributed using the approved distribution rules.

(g) The particulars of the senior management and their qualifications.

(h) The strategies and systems put in place to ensure that the royalties are collected and distributed efficiently.

(i) The audited accounts submitted

(j) Submission of all quarterly reports before the 10th day of next quarter.

(k) Any further information and clarification that may be useful in determining the application for renewal. Where the information is not available or provided, the Executive Director shall send an auditor to the Collective Management Organization to conduct systems, forensic or financial audit as may be relevant.

(3) The Collective management organizations shall submit on a quarterly basis or shorter period a report on any matter touching on members' interests during the period the organization shall be holding a valid license including accounts and minutes of a Collective Management Organization's ordinary, special or general meetings. The Board may also cause a special Audit to be undertaken by audit firms specifically appointed by it.

(4) The collective management organization shall submit to the Board all notices of its Board meetings at least 7 days before the meeting and may from time to time send a representative to attend collecting organizations meetings. Such representative shall not be eligible to a director's allowance.

(5) A certificate of registration of a Collective Management Organization shall be in Form No. CMO 02.

(6) An application for renewal of registration of a Collective Management Organization and certificate of renewal of registration of such Organization shall be in Form No. CMO 03 and Form No. CMO 04 respectively.

(7) 1. In relation to Sec 46 D (i) the Board shall appoint a person experienced and qualified as an accountant to undertake the inspection as may be required under the Act. Such an inspector shall not be an employee of the Board or the Collective Management Organisation being inspected. The costs and fees of such an inspection shall be paid by the Board on delivery of the inspection report.

2. In relation to Sec 46 E (1)(e) such inspector may conduct the assignment for a period of not more than 3 months.

(8) in relation to Sec 46E (f), the Executive Director shall appoint the statutory manager by a letter and such appointment shall be published in two newspapers with the largest circulation and shall published in the Kenya Gazette.

(9) Under Sec 46F (a) further to the annual financial statement, the organization will be required to submit a summary of detailed total revenue collected from each source of income; royalties paid ; any income retained for administration cost; taxes retained or paid on the income, and incomes not distributed.

(10) With regard to Annual General Meeting or Extraordinary General Meetings; the collective management organization shall cause a copy of the notice of the meeting shall be submitted to the Board. Members who have additional agenda shall submit the agenda to the Company Secretary and submit a copy to the Board. The Executive Director of Board shall appoint an officer to attend and observe the management of meeting as well as advice the Company Secretary if requested.

PART III-COLLECTIVE MANAGEMENT ORGANIZATIONS

General obligations of Collective Management Organizations in relation to right holders.

4. Pursuant to the provisions of the Act, a Collective Management Organization shall—

(a) act in the best interests of right holders whose rights it represents; and

(b) not impose on such right holders any obligations which are not objectively necessary for the protection of their rights and interests or for the effective management of their rights;

(c) shall act for the collective benefit of those right-holders, as its sole or main purpose, and which fulfills one or both of the following criteria;

(b) be owned or controlled by its members;

(c) be organized on a not-for-profit basis.

Particular obligations of Collective Management Organizations in relation to right holders.

5. A Collective Management Organization shall ensure that—

- (a) right holders have the right to authorize to a Collective Management Organization —
 - (i) the rights;
 - (ii) categories of rights; and
 - (iii) types of works
- (b) it manages the matters referred to in paragraphs (a)(i) to (iii) provided that the management of these matters falls within the scope of its activity or unless it has objectively justified reasons to refuse management;
- (c) right holders have the right to grant licenses for non-commercial uses of any of the matters referred to in paragraphs (a)(i) to (iii);
- (d) right holders have the right—
 - (i) to terminate the authorization to manage the matters referred to in paragraphs (a)(i) to (iii) granted by them to a Collective Management Organization; or
 - (ii) to withdraw the authorization from a Collective Management Organization the matters referred to in paragraphs (a)(i) to (iii) upon serving a fourteen days' notice;
- (e) if there are amounts due to a right holder for acts of exploitation which occurred, or under a license granted, before the time when termination or withdrawal under paragraph (d) took effect, the right holder retains the rights under regulations 12 , 13, 19 , 20 and 29;
- (f) it does not restrict the exercise of rights referred to in paragraphs (d) and (e) by requiring, as a condition for the exercise of those rights, that the management of the matters referred to in paragraph (a)(i) to (iii) which are subject to the termination or the withdrawal are entrusted to another Collective Management Organization;
- (g) where a right holder authorizes a Collective Management Organization to manage that right holder's rights—

- (i) the right holder gives consent specifically for each of the matters referred to in paragraph (a)(i) to (iv), which the right holder authorizes the Collective Management Organization to manage; and
- (ii) that consent shall be in writing or other documentary form;
- (h) it informs a right holder of their rights under paragraphs (a) to (g) and any conditions attached to the right in paragraph (c) before obtaining the right holder's consent to its managing the matters set out in paragraphs (a)(i) to (iii);
- (i) the rights under paragraphs (a) to (i) are set out in the memorandum and articles of association of the Collective Management Organization;
- (j) in its memorandum and articles of association, there is a clear provision that its primary objective is to collect and distribute royalties.

Membership rules of Collective Management Organizations.

6.(1) A Collective Management Organization shall—

(a) accept as members—

(i) right holders, and

(ii) entities representing right holders, including other Collective Management Organizations and associations of right holders;

if they fulfil the membership requirements provided for under their respective articles and memorandum of association; and

(b) in cases where it refuses to accept a request for membership, provide the right holder with a clear explanation of the reasons for its decision.

(2) A Collective Management Organization shall ensure that its membership requirements—

(a) are based on objective, transparent and non-discriminatory criteria;

(b) are included in its memorandum and articles of association; and

(c) are made publicly available.

(3) (a) A Collective Management Organization may require that any member who desires or wishes to subscribe to its membership pays a subscription fee.

(c) Subject to paragraph (a), the Board may approve the membership fee.

Collective Management Organizations and their members.

7. A Collective Management Organization shall—

(a) ensure that its memorandum and articles of association provides for appropriate and effective mechanisms for the participation of its members in the decision-making process of that Organization;

(b) ensure that the representation of the different categories of members in the decision making process is fair and balanced;

(c) allow—

(i) its members, and

(ii) right holders who are not members but who have a direct legal relationship with it by law or, license or other contractual arrangement;

to communicate with it by electronic means including, in the case of its members, for the purposes of exercising members' rights;

(d) The relationship referred under this Regulation shall cease on the loss of the license

(e) Keep records of its members and regularly update those records.

General meeting of Collective Management Organizations.

8.(1) A Collective Management Organization shall ensure that—

(a) the general meeting is convened at least once a year;

(b) only the general meeting decides on any amendments to the memorandum and articles of association and the membership terms of the Collective Management Organization;

(c) Only the general meeting decides on the appointment and dismissal of the directors, reviews their general performance and approves their remuneration and other benefits such as monetary and non-monetary benefits.

(d) in accordance with regulations 11, 12 and 13, the general meeting decides on—

- (i) the general policy on the distribution of amounts due to right holders;
 - (ii) the general policy on the use of non-distributable amounts;
 - (iii) the general investment policy with regards to rights revenue and to any income arising from the investment of rights revenue;
 - (iv) the general policy on deductions from rights revenue and from any income arising from the investment of rights revenue;
 - (v) the risk management policy or policies;
 - (vi) the approval of any acquisition, sale or charge on immovable property;
 - (vii) the approval of mergers and alliances;
 - (viii) Retained amounts and purpose of retention of the amounts.
- (e) the general meeting controls the activities of the Collective Management Organization by deciding on the appointment of an independent external auditor to audit its accounts regularly.
- (f) all members of the Collective Management Organization have the right to participate in, and the right to vote at, the general meeting;
- (g) every member of a Collective Management Organization has a right to a proxy to participate in, and vote at, the general meeting on the member's behalf provided that the appointment is in writing and does not result in a conflict of interest; and
- (h) subject to sub-paragraph (g)—
- (i) a proxy is valid for only a single general meeting;
 - (ii) the proxy enjoys the same rights in the general meeting as those to which the appointing member would be entitled;
 - (iii) the proxy may cast votes in accordance with the instructions issued by the appointing member and subject to the provisions contained in the memorandum and articles of association of the Organization.

Supervisory
function.

9. (1) A Collective Management Organization shall ensure that it has in place a supervisory function for continuously monitoring the activities and the performance of the duties of the persons who manage the business of the Organization.

(2) The purposes for this supervisory function is to ensure that—

(a) there is a fair and balanced representation of the different categories of members of the Collective Management Organization in the body exercising the supervisory function;

(b) the body exercising the supervisory function meets regularly and has at least the following powers—

(i) to exercise the powers delegated to it by the general meeting; and

(ii) to monitor the activities and the performance of the duties of persons referred to in regulation 10, including the implementation of the decisions of the general meeting and, in particular, of the general policies referred to in paragraphs (1)(d)(i) to (iv) of regulation 8; and;

(c) the body exercising the supervisory function reports on the exercise of its powers to the general meeting at least once a year.

Management
etc.

10.(1) A Collective Management Organization shall ensure that persons who manage its business do so in a sound, prudent and appropriate manner, using sound administrative and accounting procedures and internal control mechanisms.

(2) A Collective Management Organization shall put in place and apply procedures—

(a) to avoid conflicts of interest; and

(b) where such conflicts cannot be avoided, to identify, manage, monitor and disclose actual or potential conflicts of interest in such a way as to prevent them from adversely affecting the collecting interests of the right holders whom the Organization represents.

(3) The procedures referred to in paragraph (2) include an annual individual statement by each of the persons referred to in paragraph (1) to the general meeting, containing the following information—

- (a) any interests in the Collective Management Organization;
- (b) any remuneration received in the preceding financial year from the Collective Management Organization, including, benefits in kind and other types of benefits;
- (c) any amount received in the preceding financial year as a right holder from the Collective Management Organization; and
- (d) a declaration concerning any actual or potential conflict between—
 - (i) any personal interests and those of the Collective Management Organization; and
 - (ii) any obligations owed to the Collective Management Organization and any duty owed to any other person.

(4) A Collective Management Organization shall ensure that its staff training procedures for employees, agents and representatives include appropriate training about conduct that complies with its obligations under these Regulations.

(5) (1) There shall be conducted lifestyle audit of members of staff of every Collective Management Organization annually.

(2) The lifestyle audit shall be conducted by the Auditor appointed at the general meeting.

(3) The Board of a Collective Management Organization shall ensure that its staff is not related to any member of the Board.

Collection and use of rights revenue.

11. A Collective Management Organization shall ensure—

- (a) that it is diligent in the collection and management of rights revenue;
- (b) that it keeps separate in its accounts—
 - (i) rights revenue and any income arising from the investment of rights revenue; and

- (ii) any own assets it may have and income arising from such assets, from management fees, subscription fees or from other activities;
 - (iii) Administration and distribution amounts.
- (c) that it does not use rights revenue or any income arising from the investment of rights revenue for purposes other than distribution to right holders, except where it is allowed—
- (i) to deduct or offset its management fees in compliance with a decision taken in accordance with regulation 8(1)(d)(iv);or
 - (ii) to use the rights revenue or any income arising from the investment of rights revenue in compliance with a decision taken in accordance with regulation 8(1)(d);and;
- (d) that where it invests rights revenue, or any income arising from the investment of rights revenue, it does so—
- (i) in the best interests of the right holders whose rights it represents;
 - (ii) in accordance with the general investment and risk management policy referred to in paragraphs (1)(d)(iii) and (vi) of regulation 8.
 - (iii) The collective management organization shall seek the approval of its distribution rules from the Board.
 - (iv) Any income sought to be retained by the collective management organization shall be with the approval of the members in the Annual General Meeting or Extraordinary General Meeting and shall be expended for the purpose members have resolved.

Deductions. **12.(1)** A Collective Management Organization shall ensure that where a right holder authorizes it to manage that right holder's rights, the Collective Management Organization provides the right holder with information on—

(a) management fees; and

(b) other deductions from the rights revenue and from any income arising from the investment of the rights revenue before obtaining the right holder's consent to manage the right holder's rights.

(2) A Collective Management Organization shall ensure that deductions—

(a) are reasonable in relation to the services provided by the Collective Management Organization to right holders (including, where appropriate, the services referred to in paragraph (5); and

(b) are established on the basis of objective criteria.

(3) A Collective Management Organization shall ensure that management fees do not exceed the justified and documented costs incurred by the Collective Management Organization in managing copyright and related rights.

(4) A Collective Management Organization shall ensure that the use and the transparency of the use, of amounts deducted or offset in respect of management fees apply to any other deductions made in order to cover the costs of managing copyright and related rights.

(5) A Collective Management Organization shall ensure that where it provides social, cultural or educational services funded through deductions from rights revenue or from any income arising from the investment of rights revenue, such services are provided on the basis of fair criteria, in particular in relation to access to, and the extent of, those services.

Distributions of amounts to right holders.

13.(1) A Collective Management Organization shall regularly, diligently and accurately distribute and pay amounts due to right holders in accordance with the general policy on distribution referred to in regulation 8(1)(d)(i) and subject to regulation 15(3).

(2) A Collective Management Organization shall distribute and pay the amounts referred to in paragraph (1) to right holders as soon as possible, but in any event not later than the beginning of the period which starts 9 months from the end of the financial year in which the rights revenue was

collected unless paragraph (3) applies.

(3) This paragraph applies where there are objective reasons which prevent the collective Organization from distributing or paying the amounts within the time specified in that paragraph.

(4) The objective reasons referred to in paragraph (3) may relate in particular to—

(a) reporting by users;

(b) identification of rights or right holders; or

(c) matching of information on works and other subject matter with right holders.

(5) A Collective Management Organization shall ensure that amounts due to right holders are kept separate in the accounts of the Collective Management Organization where—

(a) those amounts cannot be distributed within the time specified in paragraph (2) because the relevant right holders cannot be identified or located; and

(b) paragraph (3) does not apply.

(6) A Collective Management Organization shall take all necessary measures to identify and locate right holders consistent with the requirements of paragraph (1).

(7) The measures referred to in paragraph (6) include in particular—

(a) the Collective Management Organization making available, at the latest 3 months after the beginning of the period specified in paragraph (2), information on works and other subject matter for which a right holder has not been identified or located to—

(i) the right holders that the Collective Management Organization represents or entities which are its members and which represent right holders; and

(ii) the Collective Management Organizations with

which it has concluded representation agreements.

(b) the Collective Management Organization—

- (i) verifying the records referred in regulation 7(d) and other readily available records; and
- (ii) where right holders remain unidentified or not located, making the information referred to in sub-paragraph (a) available to the public no later than one year after the of the 3 month period referred to in that sub-paragraph.

(8) The information referred to in paragraph (7) includes, where available—

- (a) the title of the work or other subject matter;
- (b) the name of the right holder;
- (c) the name of the relevant publisher or producer; and
- (d) any other relevant information available which could assist in identifying the right holder.

(9) Amounts due to right holders are non-distributable for the purposes of these Regulations where—

- (a) they cannot be distributed before the end of the period of 3 years from the end of the financial year in which collection of the rights revenue occurred; and
- (b) the Collective Management Organization has taken all necessary measures to identify and locate the right holders referred to in paragraph (6).

(10) A Collective Management Organization shall provide to its members statements of royalties paid within a given period.

Rights
managed
under

14. A Collective Management Organization shall not discriminate against any right holder whose rights it manages under a representation agreement in particular with respect to—

representation agreements.

- (a) applicable tariffs;
- (b) management fees; and
- (c) the conditions for—
 - (i) the collection of rights revenue; and
 - (ii) distribution of amounts due to right holders.

Deductions and payments in representation agreements.

15.(1) A Collective Management Organization shall not make deductions (other than in respect of management fees)—

- (a) from the rights revenue derived from the rights it manages on the basis of a representation agreement, or
- (b) from any income arising from the investment of that rights revenue, unless the other Collective Management Organization that is party to the representation agreement expressly consents to such deductions.

(2) A Collective Management Organization shall regularly, diligently and accurately distribute and pay amounts due to other Collective Management Organizations.

(3) A Collective Management Organization shall carry out the distribution and payments referred to in paragraph (2) as soon as possible but in any event no later than the beginning of the period which starts 9 months from the end of the financial year in which the rights revenue was collected unless paragraph (4) applies.

(4) This paragraph applies where there are objective reasons which prevent the Collective Management Organization from distributing or paying the amounts within the time specified in paragraph (3).

(5) The objective reasons referred to in paragraph (4) may, in particular, relate to—

- (a) reporting by users;
- (b) identification of rights or right holders; or
- (c) matching of information on works and other subject matter with right holders.

(6) The other Collective Management Organization referred to in paragraph (1) or, where it has a member which is an entity representing right holders, that member shall ensure that it distributes and pays the amounts due to right holders as soon as possible but in any event no later than the beginning of the period which starts 6 months from the receipt of those amounts unless paragraph (7) applies.

(7) This paragraph applies where there are objective reasons which prevent the Collective Management Organization or its member referred to in paragraph (6) from distributing and paying the amounts within the time specified in paragraph (6).

(8) The objective reasons referred to in paragraph (6) may, in particular, relate to—

- (a) reporting by users;
- (b) identification of rights or right holders; or
- (c) matching of information on works and other subject matter with right holders.

Licensing. **16.(1)** A Collective Management Organization and a user shall—

- (a) conduct negotiations for the licensing of rights in good faith; and
- (b) provide each other with all necessary information.

(2) A Collective Management Organization shall ensure that licensing terms are based on objective and non-discriminatory criteria.

(3) A Collective Management Organization shall ensure that—

- (a) right holders receive appropriate remuneration for the use of their rights;
- (b) tariffs it determines for exclusive rights and rights to remuneration are negotiated in good faith and are reasonable in relation to matters such as—
 - (i) the economic value of the use of the rights in trade taking into account the nature and scope of the use of the work and other subject matter; and
 - (ii) the economic value of the service provided by the

Collective Management Organization;

(iii) the value added by any service providers and individuals; and

(c) it informs the user concerned of the criteria used for the setting of those tariffs.

(4) A Collective Management Organization shall—

(a) reply without undue delay to requests from users indicating, amongst other things, the information needed in order for the Collective Management Organization to offer a licence;

(b) upon receipt of all relevant information without undue delay either—

(i) offer a licence; or

(ii) provide the user with a reasoned statement explaining why it does not intend to licence;

(c) allow users to communicate with it by electronic means, including, where appropriate, for the purpose of reporting on the use of the licence; and

(d) after giving a user a licence, treat that user in good faith .

(5). Subject to Regulation 16(1) (a), the Board may where negotiations fail between a user and a Collective Management Organization, determine tariffs.

(6) Where more than one Collective Management Organization operates in one sector, the Collective Management Organizations involved shall sign a recognition agreement for joint negotiations of licensing and joint collection of royalties.

Users'
obligations.

17.(1) A user and a Collective Management Organization shall mutually agree on the information that the user shall provide to the Collective Management Organization where such information is necessary for—

(a) the collection of rights revenue; and

(b) the distribution and payment of amounts due to right holders.

(2) A Collective Management Organization and a user shall ensure that they take into account, as far as possible, voluntary industry standards in deciding on the format for the information referred to in paragraph (1).

Information provided to other Collective Management Organizations.

18.(1) A Collective Management Organization shall make available at least the information specified in paragraph (2) by electronic means not less than once a year to other Collective Management Organizations on whose behalf it manages rights under a representation agreement for the period to which the information relates.

(2) The information specified in this paragraph is—

(e) the rights revenue attributed for the rights it manages under the representation agreement;

(f) the amounts paid by the Collective Management Organization—

(i) for each category of rights managed, and

(ii) for each type of use for the rights it manages under the representation agreement;

(a) rights revenue attributed which is outstanding for any period;

(b) deductions made in respect of management fees;

(c) deductions made for a purpose other than in respect of management fees referred to in regulation 15;

(d) information on any licences granted or refused with regard to works and other subject matter covered by the representation agreement; and

(e) adopted by the general meeting in so far as those resolutions are relevant to the management of the rights under the representation agreement.

Information

19.(1) Subject to regulation 19, a Collective Management Organization

provided to
right holders,
other
Collective
Management
Organizations
and users
on request.

shall make the information specified in paragraph (2) or, where it applies, paragraph (4) available by electronic means and without undue delay, in response to a duly justified request, to—

- (i) a Collective Management Organization on whose behalf it manages rights under a representation agreement;
- (ii) a right holder; or
- (iii) a user

(2) The information specified in this paragraph is—

- (a) the works or other subject matter the Collective Management Organization represents; and
- (b) the rights the Collective Management Organization manages directly or the Collective Management Organization manages under representation agreements; and
- (c) the countries covered.

(3) Paragraph (4) applies where, due to the scope of the activity of the Collective Management Organization the work or other subject matter which it represents cannot be determined.

(4) The information specified in this paragraph is—

- (a) the types of works of other subject matter the Collective Management Organization represents;
- (b) the rights the Collective Management Organization manages; and
- (c) the countries covered.

Disclosure of
information to
the public

20.(1) A Collective Management Organization shall—

- (a) make public the information specified in paragraph (2); and
- (b) publish and keep up to date on its public website the information specified in that paragraph.

(2) The information specified in this paragraph is—

- (a) its memorandum and articles of association;
- (b) the list of persons referred to in regulation 10(1)
- (c) its general policy on distribution of amounts due to right holders;
- (d) its general policy on management fees;
- (e) its general policy on deductions, other than in respect of management fees, from—
 - (i) rights revenue; and
 - (ii) income arising from the investment of rights revenue including deductions for the purposes of social, cultural and educational services;
 - (iii) the general policy on the use of non-distributable amounts; and
 - (iv) the complaint handling and dispute resolution procedures available.
- (f) its annual reports and audited accounts.

PART IV-FILING OF ANNUAL REPORTS AND AUDITED ACCOUNTS BY COLLECTIVE MANAGEMENT ORGANIZATIONS

Annual reports and audited accounts.

21.(1) This regulation applies with respect to filing of annual reports and audited accounts under section 47 of the Act.

(2) Every registered Collective Management Organization shall within three months after the end of their financial year, submit to the Board on Form No. CMO 05 an annual report for that year accompanied by a copy of its audited accounts in respect of that year.

(3) The annual report referred to in paragraph (2) shall contain –

(a) a comprehensive report of all the Organization’s activities during the year;

(b) a list of all its members as at the end of the financial year;

(c) the total amount of royalties collected by the Organization;

(d) the amount of royalties paid to each member;

(e) the amount of money spent by the Organization on the administration of the Organization and for all its operations;

(f) the name, postal and physical address of the auditors of the Collective Management Organization;

(g) the amount of money used for the social fund;

(h) Non distributed royalties and reasons for the non-distribution;

(i) the names, addresses and occupations of current officials of the Organization; and

(j) any other information that the Board may require.

PART V-DISPUTE RESOLUTION AND ENFORCEMENT

Complaints procedure.

22.(1) A Collective Management Organization shall make available to—

(a) its members;

(b) right holders who are not its members but who have a direct legal relationship with it by law or by way of assignment, licence or other contractual arrangement;

(c) Collective Management Organizations on whose behalf it manages rights under representation agreement; and

(d) users;

Effective and timely procedures for dealing with complaints.

(2) The matters covered by the procedures for dealing with complaints referred to in paragraph (1) relate in particular to—

(a) authorization to manage rights;

(b) termination or withdrawal of rights;

(c) membership terms;

(d) the collection of amounts due to right holders;

(e) deductions and distributions; and

(f) the service provided.

(g) the conduct of members of staff during licensing.

(3) A Collective Management Organization shall—

(a) respond in writing to complaints; and

(b) give reasons where it rejects a complaint.

Alternative dispute resolution procedures	<p>23.(1) A Collective Management Organization shall ensure that disputes to which paragraph (2) applies can be submitted to an independent and impartial alternative dispute resolution procedure where all the parties consent to such procedure.</p> <p>(2) This paragraph applies to disputes between a Collective Management Organization and one of its members, a right holder, a user or another Collective Management Organization concerning compliance with these Regulations.</p>
Right of right holders in relation to a breach of regulation 4.	<p>24. (1) The obligation of a Collective Management Organization to comply with regulation 4 is a duty owed to any right holder who may be affected by the contravention of that regulation.</p> <p>(2) Where a duty is owed by virtue of paragraph (1) to a right holder, a breach of that duty which causes that right holder to sustain loss or damage shall be actionable by the right holder.</p>
Monitoring of compliance.	25. The Kenya Copyright Board shall monitor compliance with these Regulations.
Evidence of non-compliance.	26. The Board shall have regard to evidence which is notified to the Board of activities or circumstances which may constitute a breach of these Regulations.
Power to request information.	<p>27.(1) The Board may give notice to—</p> <ul style="list-style-type: none"> (a) a Collective Management Organization; (b) a member (c) a right holder or a body representing the interests of right holders; (d) a user or body representing the interests of users; <p>(2) The notice may require the person to whom it is given to supply the information or document at a time and a place and in a form and manner which is specified.</p>

(3) The person to whom the notice is given shall supply to the Board the information or document which is specified or described in the notice.

(4) Nothing in this regulation gives the Board any power to require a person to supply any information or document which the person would be entitled to refuse to supply on the grounds of advocate-client privilege, on the grounds of confidentiality of communications, confidential business information or any information the disclosure of which is protected or otherwise restricted by any other law.

(5) Nothing in this regulation shall be construed as requiring a person to provide information if to do so might incriminate that person.

Compliance
notice.

28.(1) Where the Board thinks that a Collective Management Organization has failed to comply with its obligations under Part II or III of these Regulations, the Board may give a compliance notice to that person, body or Organization.

(2) A compliance notice shall be in writing and shall—

(a) state the Collective Management Organization has not complied with a provision of these Regulations;

(b) specify the provision in question and state the acts or omissions which the Board thinks contravene that provision;

(c) request the Collective Management Organization, where non-compliance with the provision is continuing,—

(i) to end the non-compliance within such time as the notice may specify;

(ii) to provide such evidence within that period to the satisfaction of the Board that the non-compliance has ended;

(d) if the Board thinks fit, request the Collective Management Organization to provide a written undertaking in a form which is satisfactory to the Board, that non-compliance with the provision

will not be repeated; and

(e) warn the Collective Management Organization that if—

(i) the Collective Management Organization does not comply with the compliance notice, or

(ii) the Collective Management Organization fails to comply with a written undertaking provided in respect of the compliance notice, further action may be taken subject to provisions of law.

(3) The Board may rescind a compliance notice given to a Collective Management Organization and in doing so shall give the Collective Management Organization notice of the rescission.

(4) Where a compliance notice has been given in relation to a failure to comply with these Regulations, no action to impose a penalty under regulation 29 may be taken in relation to that failure unless the Collective Management Organization to whom it has been given has failed—

(a) to comply with the compliance notice; or

(b) to comply with a written undertaking provided in respect of a compliance notice.

Financial penalties for non-compliance.

29.(1) The Board may impose a financial penalty on a Collective Management Organization if the Board is satisfied upon hearing the Collective Management Organization whom the penalty is imposed and all other necessary and relevant persons that the Collective Management Organization referred to in paragraphs (1)(a) to (f) has failed to comply with its obligations under Part II or III of these Regulations or regulations 29, 23 or 27.

(2) Where the Board imposes a financial penalty on a Collective Management Organization under paragraph (1), the Board may in addition impose a financial penalty on a director, manager or similar officer of that Collective Management Organization or, where the Organization's affairs are managed by its members.

(3) The amount of the financial penalty shall be such amount as the Board considers appropriate.

(4) In deciding what amount is appropriate the Board shall have regard to the nature of the failure of compliance.

(5) A financial penalty may comprise of either—

(a) a sum not exceeding one hundred thousand shillings; or

(b) a sum not exceeding one hundred thousand shillings together with a sum not exceeding ten thousand shillings for each day that the person referred to in paragraph (1) continues to fail to comply with its obligations under these Regulations not exceeding in total one hundred thousand shillings.

(6) A financial penalty is payable to the Board.

Financial penalties:
procedure.

30. (1) As soon as practicable after imposing a financial penalty, the Board shall give notice of the financial penalty to the Collective Management Organization on whom it is imposed.

(2) The notice shall state—

(a) that the Board has imposed a financial penalty;

(b) the amount of the financial penalty;

(c) the acts or omissions which the Board considers contravene these Regulations;

(d) the provisions of these Regulation which the Board considers are contravened;

(e) any other facts which the Board considers justify the imposition of a financial penalty;

(f) the period (not less than 28 days from the date the notice is received by the person) within which the financial penalty is to be paid.

(3) The Board may rescind a penalty which has been imposed on a Collective Management Organization under regulation 26 and where doing so shall give the Collective Management Organization notice of the rescission.

Appeals. **31.** If a Collective Management Organization on whom a financial penalty is imposed is aggrieved by the imposition or the amount of a financial penalty, the Collective Management Organization may appeal to the Copyright Tribunal.

Recovery of a financial penalty. **32.** Where a financial penalty, or any portion of it, has not been paid by the time which it required to be paid, the Board may recover from the Collective Management Organization on whom the penalty is imposed any of the penalty which has not been paid as a debt due to the Board.

(2) Where an appeal or a court action is made against the decision of the Board to impose a financial penalty, the party filing the appeal is not under an obligation to pay the penalty pending the hearing and determination of the appeal and such non-payment shall not be deemed to be a continued violation of the penalty notice or the obligation giving rise to the penalty.

PART VI- CONSEQUENTIAL AMENDMENTS TO THE COPYRIGHT REGULATIONS, 2004

Amendment of the Copyright Regulations, 2004. **33.** The Copyright Regulations, 2004 are amended by deleting Parts VII AND VIII.

SCHEDULE

FORM NO. CMO 01 (r. 3 (1))

THE COPYRIGHT ACT, 2001

THE KENYA COPYRIGHT BOARD

APPLICATION FOR REGISTRATION AS A COLLECTIVE MANAGEMENT ORGANIZATION UNDER SECTION 46 (2) OF THE ACT

Name , email and postal address of the collective management Organization	
Physical address	
Name and address of agent (if any)	
Date and number of registration of the Organization under the Companies Act	
Number of members of the Organization	
Class of copyright owners Represented	

We attach herewith all the documents referred to in **REGULATION 3 (1)** in support of our application.

Dated at this day of, 20



Signature(s)

Seal of the CMO

FORM NO. CMO 02(r. 3 (2))

THE COPYRIGHT ACT, 2001

**CERTIFICATE OF REGISTRATION OF A COLLECTIVE
MANAGEMENT ORGANIZATION UNDER SECTION 46 (2) OF THE ACT**

It is hereby certified that

.....

has been registered as a Collective Management Organization under section 46 (2) of the Act under registration number for the category of owners of copyright or related rights.

Dated at Nairobi this day of, 20



Signature
Executive Director,
The Kenya Copyright Board

Seal of the Board

FORM NO. CMO 03(r. 3 (3))

THE COPYRIGHT ACT, 2001

THE KENYA COPYRIGHT BOARD

**APPLICATION FOR RENEWAL OF REGISTRATION OF A COLLECTIVE
MANAGEMENT ORGANIZATION**

Name, email and postal address of the collective management Organization	
Physical address	

Name and address of agent (if any)	
Date of registration	
Class of copyright owners	
Application number	
Registration number	
Any change which occurred during the past year (use a separate sheet, if necessary)	

We hereby apply for renewal of the registration of the Organization as a Collective Management Organization for the period

We attach hereto a certified copy of our audited accounts for the year 20

Dated at this day of, 20



Seal of the CMO

Signature(s)

FORM NO. CMO 04 (r. 3 (3))

THE COPYRIGHT ACT, 2001

CERTIFICATE OF RENEWAL OF REGISTRATION OF A COLLECTIVE MANAGEMENT ORGANIZATION

This is to certify that the registration of

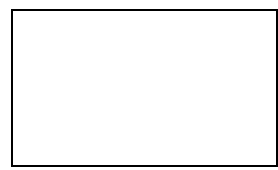
.....

for the class of owners of copyright and related rights (delete as appropriate) owners of with registration number

..... has been renewed.

The renewed registration will commence on.....day ofexpire on the day of 20

Dated at Nairobi this day of 20



Signature(s)
Executive Director,
The Kenya Copyright Board

Dated the 2017.

FORM NO. CMO 05 (r. 3 (3))

THE COPYRIGHT ACT, 2001

THE KENYA COPYRIGHT BOARD

ANNUAL REPORT AND AUDITED ACCOUNTS FILED UNDER SECTION 47 OF THE ACT

Name and address of the collective management Organization	
Physical address of Organization	
Date of registration	

Class of copyright and related rights owners	
--	--

We attach herewith all the documents referred to in Regulation 21.

Dated at this day of, 20



Authorised Signature

Official Stamp of the CMO