



KENYA COPYRIGHT BOARD



ADVISORY ON COVER VERSIONS OF SOUND RECORDINGS

In the recent past, there have been complaints involving violation of rights of popular sound recordings.

The complaints received affect top hits (ever green) songs in gospel, Gikuyu and Kalenjin languages.

The complaints received at the Kenya Copyright Board office involve the re-recording of pre-existing sound recording, public performance of the new recording and the release of the work mostly online in the name of other artists with no acknowledgement and authority of the original work or its author(s).

The resultant work or recording is considered as a cover version. A cover version of music is a remake or a new performance or recording by someone other than the original artist or composer of a previously recorded sound recording.

It is a re-recorded version of a song, replacing the original vocals with another without changing the underlying melody or arrangement. Some cover songs are non-commercial, created out of love of the original artist by fans, with no negative impact on the market value of the original song while others may be commercially exploited unfairly competes with the market of the original music, hence cannibalizing its potential sales especially online.

Generally, every musical work consists of two distinct copyright elements, i.e., the melody as a musical work and the lyrics as a literary work. In Kenya, under Section 2 of the copyright Act, musical works include both the melody (graphical notation) and the lyrics accompanying the melody. The melody and the lyrics can be separated and still be protected independently. A cover song typically uses original lyrics while reproducing an existing melody.

The composer has rights in the melody and the author has rights in the lyrics. In many cases the author and composer are the same person.

The composer has the right of reproduction, public performance, broadcasting, distribution and the right to authorize fixation of the works into any mechanical form i.e., sound recording.

The owner of the sound recording is the producer of that sound recording. The producer must be authorized by the author/composer to create a sound recording.

The producer of a sound recording holds the rights of reproduction of the original work, distribution, importation, and communication to the public in the sound recordings.

It follows therefore that any unauthorized reproduction of another musician's musical work including the melody (graphical notation of the music) would be an infringement.

By virtue of the above, a person who purports to re-record a sound recording without the authority of the producer and author/composer commits an act of infringement as defined under Section 35(1)a of the Copyright Act.

To monetize and publicly distribute a cover song, the covering artist must obtain a license (for the sound recording) allowing him to utilize the original musical work (melody), from the original artist.

Anyone who creates a cover version of an existing musical work without the author's express authorization infringes on the copyright and producer related right.

The creator of unauthorized cover version is liable to the original rights holder and may be charged under section 38(1)a of the Copyright Act for the offence of making for sale or hire an infringing copy. In addition, an infringer would be liable for damages if sued.

Anyone interested in the production of cover songs are therefore advised to obtain authorization from relevant rights holders before recording or performing such works. It is recommended that such authorization should be in writing (contract) so that it can be verified in the event of a disagreement.

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**EXECUTIVE DIRECTOR
KENYA COPYRIGHT BOARD.
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