

BLANK TAPE SHARE: A PROPOSAL BY KECOBO FOR PUBLIC COMMENT

Background

Section 30B (4) of the Copyright Act states that *'The Board shall determine and, by notice in the Gazette, publish the share of the private copying remuneration applicable to the respective rights holders.'*

In exercise of this power, the Board intends to publish the following share ratios in the Kenya Gazette subject to public comments received.

The proposed division is informed by two factors: estimated rate of consumption of the sector works and the practice in other countries. Having reviewed practices applied in four African countries (Nigeria, Algeria, Ghana, and Malawi, See Annex), KECOBO is persuaded by the approaches taken by Malawi, Nigeria, and Ghana.

Proposed share ratio for Blank Tape Levy income

This is therefore to propose as follows:

a. Distribution of 100% share

S/no	Sector	Share in %	Proposed expenditure of the allocation
1.	Kenya Copyright Board (KECOBO)	20	Administration, advocacy, and enforcement
2.	Agency Commission	9	Agent Commission
3.	Creative Sector	71	Administration, distribution to members, welfare, or grants
	Grant Total	100	

b. Distribution of 71% Artist Share

It is proposed to divide the artist shares to different creative sectors (No. 3 above) as follows:

Sector	Share of 71%	Rights holder at the sector	Rights holder share (100% sector Share)
Rightsholder in music and Sound Recording	36	Author, Composers, Publisher etc	54.5
		Producers of sound recordings	23.5
		Performers of sound recordings	22
Audiovisual Rights Holders	15	Film Producers*	40
		Performers/Actors	40
		Script writers*	20

Literary Works right holders	20	Book authors*	30
		Book Publisher*	50
		Visual arts and related creative sectors (photographers, painters etc) *.	20
Sub-Total	71%		

****Items marked with asterisk proposed goes to a creator’s fund to be managed by an ad hoc committee to be appointed by the Cabinet Secretary from time to time.***

Comments may include:

- a. Request to review the proposed share ratios upwards or downwards and reasons why;
- b. Whether to distribute the money to members of CMOs where applicable;
- c. Request to set aside funds for other purposes and reasons for the suggestion;
- d. If there is need to set aside funds for artist welfare including health insurance or benevolent funds with suitable justification;
- e. If there is need to set aside funds for supporting arts by way of grants or capital investment for arts; and
- f. Utilization of the share proposed to be set aside for visual, literary, and audiovisual where there is no CMO save for actors?

ANNEX: REVIEW OF PRACTICES ELSEWHERE

In our review of remuneration practices in Nigeria, Algeria, Ghana, and Malawi, we found as follows:

1. Nigeria Copyright (Levy on Materials) Order,2012

(1) The Nigerian Copyright Commission, with the prior approval of the Minister, shall distribute the levies collected in furtherance of this Order as follows:

- (a) Ten (10 %) percent for promotion of creativity;
- (b) Twenty (20%) percent for anti-piracy programme of the Nigerian Copyright Commission;
- (c) Ten (10 %) percent for administrative purposes to be shared equally among all government agencies involved in the implementation of this Order.

(d) The remaining sixty (60%) percent, after the distribution referred to in sub-paragraphs (1) (a) (b) & (c) of this paragraph, shall be distributed equally among all approved collecting societies.

(2) A special fund may be created in respect of distribution in sub-paragraph (1) (a) of this paragraph, which fund shall be managed by a joint committee of the Nigerian Copyright Commission and representatives of the creative industries to be appointed by the Minister.

(3) The funds allocated to the collecting societies in line with sub-paragraphs (1) (d) of this paragraph, shall be distributed to members of such societies in accordance with established rules of royalty distribution adopted by the society in accordance with the provisions of the collecting societies regulations for the time being in force.

2. Algeria

Art.129 Ordinance number 03-05 of 2003 relating to copyright and neighbouring rights. The levy for private copying collected is distributed after of management costs, by the national copyright office and neighbouring rights, to the categories of beneficiaries according to the following quotas: **30% to the author;20% to the performer;20% to the producer of phonograms or videograms.**

3. Ghana

- a) For holders of audio works rights,
- 28% to composers or publishers
 - 21% to producers
 - 21% to performers
- b) for holders of audio-visual works rights;
- 35% to producers
 - 21% to performers
 - 14% to authors of audio-visual rights
- c) For holders of literary works rights:
- 42% to authors, and
 - 28% to publishers

- 10% for cultural activities to the collectively administered by the collective administrative societies.
- 10% for the administrative purposes of collective societies
- 4% to the customs Excise and preventive service, and
- 6% to the copyright office

4. Malawi

60% is shared among composers, authors, performers, producers of sound recordings, authors and publishers of literary works, authors, performers, and producers of audio-visual works in accordance with distribution rules.

- 5% MRA
- 5% Government
- 20% COSOMA
- 10% Cultural fund deduction