



## COLLECTIVE MANAGEMENT OF COPYRIGHT



### FREQUENTLY ASKED QUESTIONS ON COLLECTIVE MANAGEMENT ORGANISATIONS (CMOs)

#### a. Reason for frequently asked questions on collective management organizations

The Kenya Copyright Board has an oversight function of Collective Management Organizations (CMOs) as provided for in the Copyright Act. In addition, it has a role of raising awareness on Copyright matters affecting rights holders and the public.

As the government agency responsible for Copyright, it is guided by the provisions of Articles 11 and 40 of Constitution of Kenya, 2010.

The document also is a response to members of those CMOs and seeks to answer some of the questions on how CMOs relate to members, the Kenya Copyright Board and other government entities.

#### b. Why Collective Management Organizations?

One of the basic elements of copyright is the exclusive right that a creator/ author has over his works to exploit or permit/prohibit others to exploit that right. The concept of collective management is derived from the view that authors need to exercise control of their rights in their creations.

It follows then that an author / creator would have to manage this right by monitoring how it is exploited. This, however, may be impossible to do at an individual level for certain rights and therefore Collective Management Organizations (CMOs) come in handy.

Collective management therefore can be described as the exercise of rights by organizations authorized to act in the interest of rights holders of copyright thereby providing a crucial link between these **rights holders** and **users** of their works in return for a payment otherwise called royalties.

#### c. The Copyright Act and Collective Management Organizations

The Copyright Act defines collecting organization as an organization which has its main objects or one of its main objects being negotiating for the collection and distribution of royalties and granting of licenses in respect of copyright works of performers.

Generally, in the system of collective management, authors/ owners of works authorize collective management organizations to

- (i) **Monitor** the use of their works; where, when and what works are used by who.
- (ii) **Negotiate licenses** on behalf of its members including tariffs and other conditions of licensing.
- (iii) **Collect royalties** for the works and;
- (iv) **Distribute** these collections to the rightful owners.
- (v) The Collective Management Organizations also provide social cultural services to rightsholders as well as offering awareness activities aimed at ensuring a better understanding of and respect for authors' rights/copyright by the public, and representation of their members' interests with national governments.

#### d. KECOBO's powers over Collective Management Organizations Use

The Kenya Copyright Board (KECOBO) is established under section 3 of the Copyright Act and derives its functions from section 5 of the Act. The role of KECOBO as a regulator and a licensing authority is further explained by Section 46 of the Copyright Act.

KECOBO has three roles as set out in section 46 of the Act:

1. Licensing of the collective management organizations.
2. Overseeing the operations of Collective Management Organizations.
3. Facilitating the process of tariff setting.

The Copyright Act provides that Collective Management Organizations can be set up and licensed by KECOBO. Section 46 provides for the

requirements of registration of a Collective Management Organizations to the KECOBO and once the Board is satisfied thereof it issues a declaration through publication in the Kenya Gazette.

Further, under section 46E of Copyright Act, the Board as a Regulator has a supervisory role of inspection and control of all the Collective Management Organizations. The Act gives powers to the Executive Director to authorize in writing the inspection of the books of accounts and records of a Collective Management Organization on request by members.

The person authorized to inspect shall report on any breach or non-observance of the Copyright Act and Regulations, any irregularity, and any apparent mismanagement. Where the Board finds out from the results of the forensic audit that a Collective Management Organization have conducted their business contrary to the provisions of the Copyright Act, the Board may issue directions and orders as provided for under section 46F (1) (a) to (l).

KECOBO also facilitates in the process of setting of tariffs and ultimately preparing the tariff for Gazette Notice by the Cabinet Secretary responsible for Copyright matters before implementation thereof.

By virtue of the Collective Management Organizations being a corporate entity, the Registrar of Companies also has certain regulatory powers over the organization.

#### e. General governance structures of Collective Management Organizations

A Collective Management Organizations derives its authority through its statute, voluntary mandates from members and by representation agreements with other Collective Management Organizations and/or by national law. In most cases, Collective Management Organizations are organized on a not-for-profit basis and are owned or controlled by their members. Their main objective is to ensure that their members receive payment for copyright-protected uses of their works and other subject matter.

Most countries have adopted a model of private companies which are in turn regulated by a government. This applies to Kenya as well where Collective Management Organizations are private companies limited by guarantee, that are established to administer the rights

of their members such as composers, performers, authors, artists, book publishers among others.

A Collective Management Organization must first and foremost have registered members (copyright owners) with whom they have signed license or other form of authorization.

This makes the rights holders (members) the owners of these Collective Management Organizations with the overall and supreme decision-making authority. However, because of the day-to-day activities of a Collective Management Organizations cannot be efficiently carried out by the members, the said authority is delegated to the Board of Directors who in turn hire a Chief Executive Officers and managers to run the daily affairs of the CMOs.

The Collective Management Organizations and managers (the secretariat) will work and account to the Board of Directors which in turn accounts to the General Meeting of the members.

The annual or special general meeting of members as the supreme decision-making body must comply to both the directives of the Registrar of Companies and the regulatory directives issued by the Kenya Copyright Board.

#### **f. Responsibility to Members**

Collective Management Organizations will always act based on mandates received from rightsholders it represents. Collective Management Organizations will therefore establish a genuine and balanced role for rightsholders within its governance structures, with particular attention to fair voting rights.

In this regard, rightsholders will be directly involved in Collective Management Organization's decision-making process usually through the annual and other meetings.

Rightsholders' trust and confidence in their Collective Management Organizations will help it contribute to effective management of rights. Collective Management Organizations must ensure that there is transparent governance as well as proportionate rights and obligations.

Lastly, given the role of Collective Management Organizations in ensuring timely and efficient distribution of remuneration, CMOs will be expected to provide their members with information about financial performance in an accurate and timely manner.

#### **g. Rights of Collective Management Organizations members**

Pursuant to the Constitution 2010, the Copyright Act, Copyright (Collective Management Organizations) Regulations 2020 and the respective Memorandum and Articles of Associations, every Collective Management Organization member has the following rights:

##### **I. Under the Copyright Act, 2001.**

- To participate either as an aspirant for the role of Director in the affairs of a Collective Management Organizations if holding a post-secondary qualification.
- To petition KECOBO for inspection of the Collective Management Organizations.
- To be notified and invited to make written representation why their CMO should not be deregistered.
- To be informed of the deregistration of their Collective Management Organizations.

##### **II. Under the Copyright (Collective Management Organizations) Regulations 2020.**

- To be enlisted in the membership of a Society if they meet the set membership standards.
- To voluntarily authorize the Collective Management Organizations to act on their behalf.
- To withdraw or terminate the authorization.
- To have access to information regarding accounts and minutes of the meetings.
- To insert an item or amend agenda of any meeting.
- To share in the ownership of a Collective Management Organizations.
- To have his/her best interest served.
- To grant licenses for non-commercial use.
- To information regarding all the rights and benefits due to them.
- To individually manage their works over which authorization has not been given to the Collective Management Organizations.
- To be furnished in writing with the reason for refusal to be admitted or of expulsion as a member of a Collective Management Organizations.
- To be represented in the decision-making process of the Collective Management Organizations.

- To have his/her records to be maintained and continuously updated by the Collective Management Organizations.
- To attend and vote in general meetings at least once a year.
- To appoint a proxy to represent them in members general meeting of any nature.
- To approve distribution rules in a general meeting.
- To be furnished with statements regarding royalties paid within a given period.
- To access an Alternative Dispute Resolution (ADR) mechanism offered by the Collective Management Organizations in resolution of disputes.
- To have access to accounts of a Collective Management Organizations.

##### **III. Under the Collective Management Organizations Memorandum and Articles of Associations**

- To a 21-day notice in writing for a general meeting.
- To vote in a general meeting.
- To appoint a proxy in a general meeting.
- To elect directors.
- To receive notices of meetings either personally or by posts.

##### **IV. Other Statutory Provisions**

Under the Companies Act, members have powers that any shareholder in a company has in the formation and the management of their company. The Registrar of Companies within the Business Registration Services (BRS) has certain regulatory powers over Companies under that Act.

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