



REPUBLIC OF KENYA

August 2023

DRAFT BILL

THE COPYRIGHT AND RELATED RIGHTS BILL, 2023

A Legislative Proposal by
THE KENYA COPYRIGHT BOARD.

THE COPYRIGHT AND RELATED RIGHTS BILL, 2023

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARIES

1. Short title.
2. Interpretation.
3. Objects of the Act.

PART II –THE KENYA COPYRIGHT AUTHORITY

4. Establishment of the Authority.
5. Functions of the Authority
6. Powers of the Authority.
7. Board of the Authority.
8. Vacation of office
9. Powers of the Board
10. Conduct of business and affairs of the Board
11. Executive Director.
12. Corporation Secretary
13. Staff of the Authority
14. Seal and execution of documents
15. Financial Provisions
16. Annual report of the Authority.

PART III – SUBSISTENCE, OWNERSHIP AND DURATION OF COPYRIGHT

17. Works eligible for copyright.
18. Recording necessary for some works
19. Exclusive Rights in Works.
20. Qualification for copyright.

21. Qualification by reference to author
22. Qualification by reference to country of first publication
23. First ownership of copyright.
24. Duration of copyright
25. Duration for foreign works
26. Copyright in Government works
27. Copyright vesting in certain international organisations.
28. Works not eligible for copyright
29. Works in public domain
30. Register of copyright works

PART IV – ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS

31. Introductory provisions.
32. Permitted acts in general
33. Making of temporary copies
34. Personal copies for private use
35. Research and private study.
36. Copies for text and data analysis for non-commercial research
37. Criticism, review quotation and news reporting.
38. Incidental inclusion of copyright material.
39. Lending of copies libraries and archives.
40. Anthologies for educational use.
41. General exclusion for educational institutions.
42. Copying and use of extracts of works by educational establishments
43. Illustration for instruction
44. Back up and Decompilation for computer programme.
45. Exceptions and limitations for broadcasting
46. Exceptions and limitations for visually impaired persons
47. Use of notes or recordings of spoken words in certain cases.
48. Material open to public inspection or on official register.
49. Acts done under statutory authority.

PART V- PROVISIONS ON RELATED RIGHTS

50. Broadcasting of works incorporated in audio-visual works

51. Nature of copyright in sound recordings
52. Nature of copyright in broadcasts
53. Rights of performers
54. Single equitable remuneration for exploitation of Audiovisual works
55. Duration of rights
56. Private Copying Remuneration

PART VI - MORAL RIGHTS

57. Moral rights of an author and performer
58. Requirement that right be asserted.
59. Right to object to derogatory treatment of work.
60. Consent and waiver of rights.
61. Application of provisions to joint works.
62. Moral rights not assignable.
63. Transmission of moral rights on death.

PART VII - DEALING WITH RIGHTS IN COPYRIGHT WORKS

64. Artist right of resale
65. Assignment and licenses.
66. Terms of Licensing
67. Rights and remedies of exclusive licensee and sub-licensee
68. Reversion of rights by exclusive licensor
69. Reversion of rights in the case of insolvency
70. Ring back tunes

PART VIII – INFRINGEMENT OF COPYRIGHT OR RELATED RIGHTS

71. Acts restricted by copyright in a work
72. Infringements on right of performers.
73. Infringement of copyright by copying.
74. Infringement by rental or lending of work to the public.
75. Infringement by performance, showing or playing of work in public.
76. Infringement by communication to the public
77. Infringement by making adaptation or act done in relation to adaptation.
78. Secondary infringement of copyright

79. Secondary infringement: provision of apparatus for infringing performance.
80. Presumptions and Limitations in Infringement Actions
81. Relief and Remedies for Infringement
82. Removal or Alteration of Technological Protection measures
83. Penalty against technological protection measures

PART IX- LIABILITY FOR ONLINE INTERMEDIARIES

84. Protection of online intermediaries
85. Takedown Notice
86. Counter notice
87. Liability for Failure to Comply
88. Role of Online intermediary

PART X –REMEDIES FOR INFRINGEMENT

89. Infringement actionable by copyright owner.
90. Provisions as to damages in infringement action.
91. Injunctions against online intermediaries
92. Statutory Damages
93. Grant of Anton Piller order
94. Exclusive Licensee Rights and Remedies.
95. Actionable infringements by a non-exclusive licensee
96. Exercise of concurrent rights.
97. Remedies for infringement of moral rights.
98. Offences and penalties for infringement
99. Offence by body corporate

PART XI– ENFORCEMENT MECHANISMS

100. Inspectors.
101. Entry into premises
102. Mode of inspection
103. Authority to arrest.
104. Conduct of prosecution.
105. Measures at the Border

PART XII – COLLECTIVE MANAGEMENT OF RIGHTS

- 106. Forming a Collective Management Organizations.
- 107. Licensing of Collective Management Organizations
- 108. Approval of tariff
- 109. Inspection and Supervision of Collective Management Organizations
- 110. Directions and Orders of the Authority
- 111. Record Keeping

PART XIII – COPYRIGHT TRIBUNAL

- 112. Establishment of the Copyright Tribunal.
- 113. Original Jurisdiction of the Tribunal.
- 114. Appellant jurisdiction of the Tribunal.
- 115. Powers of the Tribunal
- 116. Discipline and removal of members.
- 117. Staff of the Tribunal
- 118. Procedure before the Tribunal.
- 119. Expenses of the Tribunal
- 120. Arrangement of business
- 121. Rules of the Tribunal

PART XIV—GENERAL PROVISIONS

- 122. Regulations.
- 123. Savings and Transitions
- 124. Consequential amendments
- 125. Repeal of the Copyright Act,2001

THE COPYRIGHT AND RELATED RIGHTS BILL, 2023**A Bill for**

AN ACT of Parliament to restate the Copyright Law by repealing and re-enacting the Copyright Act, 2001; to enhance the protection of copyrighted works; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title. **1.** This Act may be cited the Copyright and Related Rights Bill, 2023.

Interpretation. **2.** In this Act, unless the context otherwise requires—

"accessible format copy" means a copy of a work in an alternative manner or form which gives a beneficiary access to the work, including permitting the beneficiary access as feasibly and comfortably as a person without visual impairment or other print disability;

"art market professional" includes an auctioneer, owner or operator of a gallery, museum, an art dealer or any other person involved in the business of dealing in artworks;

"artist" means a person who engages in the creation of a performance, and includes a singer, musician, declaimer, and any other person whose performance is embodied in a format such as a ring back tune;

"assignment" means the transfer of rights, in part or in whole, in an intellectual property under this Act, held by the proprietor of the intellectual property, with or without goodwill;

"art market professional" includes an auctioneer, owner or operator of a gallery, museum, an art dealer or any other person involved in the business of dealing in artworks;

"artwork" means an original work of visual art created by an artist or artists, or produced under their authority;

“artistic work” means any work that falls under the following categories, irrespective of artistic quality, or works analogous thereto—

- (a) paintings, drawings, etchings, lithographs, woodcuts, engravings and prints;
- (b) maps, plans and diagrams;
- (c) works of sculpture;
- (d) photographs not comprised in audio-visual works;
- (e) works of architecture in the form of buildings or models; and
- (f) works of artistic craftsmanship, pictorial woven tissues and articles of applied handicraft and industrial art;

“audio-visual work” means a fixation in any physical medium of images, either synchronized with or without sound, from which a moving picture may by any means be reproduced and includes videotapes and videogames but does not include a broadcast;

“author”, in relation to—

- (a) a literary, musical, dramatic or artistic work, means the person who first creates the work;
- (b) a photograph, means the person who is responsible for the creation of the photograph;
- (c) a sound recording, means the producer;
- (d) audio-visual works, means the person by whom the arrangements for the making of the work were made;
- (e) a broadcast, means the person who takes the initiative in, and has editorial responsibility for, the making and broadcasting of the programme, including the acquisition or production and assembly of its content;
- (f) a published edition, means the publisher of the edition;

- (g) a literary, dramatic, musical or artistic work or computer program which is computer generated, means the person by whom the arrangements necessary for the creation of the work were undertaken; and
- (h) a computer program, means the person who the person who is responsible for creating or developing the program;

"broadcasting" means the transmission of sounds, images, or both, or their representations, intended for public reception, carried out via wireless techniques like radio waves, satellite, or digital formats, including the transmission of encrypted signals where the decryption means are provided to the public by the broadcasting organization or with its consent.

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to copyright and related rights;

“Collective management organisation” means an organisation that is approved and authorized to negotiate, collect, and distribute royalties, and grant licenses in respect of the use of works protected by copyright or related rights;

“Commissioned work” means a work created in pursuance of a contract between an author and an individual or a legal entity commissioning a specified work from the author against an agreed author’s fee;

"Commercial resale" means the subsequent transfer of ownership in artwork from one person to another for monetary consideration with the involvement of an art market professional;

“Communication to the public” means—

- (a) a live performance presented to an audience; or
- (b) a transmission to the public, other than a broadcast, of the images or sounds or both, of a work, performance or sound recording;

“computer program” means a set of instructions expressed in words, codes, schemes or in any other form, which is capable, when incorporated in a medium that the computer can read, of causing a computer to perform or achieve a particular task or result;

“copy” means a reproduction of work in any manner or form and includes any sound audio or visual recording of a work and any permanent or transient storage of a work in any medium, by computer technology or any other electronic means;

“copyright” means the exclusive property rights granted to the creator of an original work, as protected under this Act.

“copyright work” means a work of any of those descriptions in which copyright subsists.

“educational establishment” means any school, and any other description of educational establishment established by any law in Kenya.

"Exclusive license" means a written license, signed by or on behalf of an owner or prospective owner of copyright or related rights, which authorizes the licensee, and no one else (including the person granting the license), to exercise a right that, under this Act, would otherwise be exclusively exercisable by the owner of the copyright or related rights.

"Fair dealing" means the lawful use of copyright-protected work for specific purposes, in accordance with this Act, without the necessity of obtaining permission from the rights holder, subject to the specified conditions.

“Fixation” means embodiment of a work or of the representation thereof from which it can be perceived, reproduced or communicated through a device;

“literary work” means, irrespective of literary quality, any of the following, or works similar thereto—

- (a) novels, stories and poetic works;
- (b) plays, stage directions, film sceneries and broadcasting scripts;
- (c) textbooks, treatises, histories, biographies, essays and articles;
- (d) encyclopedias and dictionaries;
- (e) letters, reports and memoranda;

- (f) lectures, addresses and sermons;
- (g) charts, graphs and tables;
- (h) computer programs; and
- (i) tables and compilations of data including tables and compilations of data stored and embodied in a computer or a medium used in conjunction with a computer;
- (j) electronic literature, including works created in digital formats;
or
- (k) databases, including collections of independent works, data, or other materials arranged in a systematic or methodical way and capable of being individually accessed;

“musical work” means a work consisting of music, including any melody, harmony, rhythm, and lyrics, irrespective of musical quality, and includes graphical notations and works specifically composed for musical accompaniment, but does not include any sound recording or performance of the work.

"owner of the copyright" means the first owner, an assignee or an exclusive licensee, as the case may be, of the relevant portion of the copyright;

"performance" means the representation of a work or expressions of folklore by such action as dancing, playing, reciting, singing, declaiming or projecting to listeners by any means whatsoever;

"performer" means an actor, singer, declaimer, musician or other person who performs a literary, musical work or a work of folklore and includes the conductor of the performance of any such work and dancers and instrumentalists;

"public display" means the showing of original or a copy of a work—

- (l) directly;

- (m) by means of a film, slide, television image or otherwise on screen;
- (n) by means of any other device or process;
- (o) in the case of an audio-visual work, showing of individual images consequentially at a place or places where persons outside the normal circle of a family and its closest social acquaintances are or can be present irrespective of whether they are or can be present at the same place and time or at different places or times, where the work can be displayed without communication to the public;

“publication” means the distribution of tangible copies of a work or sound recording to the public in sufficient quantities through sale, rental, or lending, provided that the author, or in the case of sound recordings, the producer or their successor in title, has given consent for such distribution;

“Public performance” means—

- (a) in the case of a work other than an audio-visual work, the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process;
- (b) in the case of an audio-visual work, the showing of images in sequence and the making of accompanying sounds audible, either separately or in combination; and
- (c) in the case of a sound recording, includes making the sounds or representations of sounds fixed in a phonogram audible to the public;
- (d) in the case of works of expressions of folklore, includes performance to the public through dance, plays, acting, recitals, songs, declaiming or projection to an audience live or by any other means;

“re-broadcasting” means the simultaneous or deferred broadcasting in part or in whole by one broadcasting organisation of the broadcasts of another broadcasting organisation;

"related rights" means the rights adjacent to copyright that protect the legal interests of certain contributors to the creation and dissemination of works, including—

- (a) the rights of performers in respect of their performances;
- (b) the rights of producers of sound recordings in respect of their phonograms; and
- (c) the rights of broadcasting organizations in respect of their broadcasts.

“reproduction” means the making of one or more copies of a work in any material form and includes any permanent or temporary storage of such work in electronic or any other form;

“re-transmission” means the simultaneous or deferred transmission for the reception by the public by any means of a broadcast by a third party other than the original broadcaster organisation;

“sound recording” means any exclusively aural fixation of the sounds of a performance or of other sounds, or of a representation of sounds, regardless of the method by which the sounds are fixed or the medium in which the sounds are embodied but does not include a fixation of sounds and images, such as the sound track of an audio-visual work;

“Tribunal” means the Copyright Tribunal established under section **112**;

“work” means literary, musical, artistic, dramatic work, audio visual work and sound recordings and includes translations, adaptations, new versions, or arrangements of pre-existing works, and anthologies or collections of works which, by reason of the selection and arrangement of their content, present an original character provided that the visually impaired persons work shall be limited to literary and artistic works whether published or made available in any media.

Objects of the Act.

- 3.** The object of this Act is to—
- (a) provide strong and effective protection for copyrighted works to stimulate creativity and innovation in the Kenyan economy;

- (b) ensure compliance with international copyright treaties and conventions to which Kenya is a signatory;
- (c) establish clear rights and responsibilities for copyright owners, users, and intermediaries, promoting transparency and accountability in the exercise and management of copyrights; and
- (d) balance the interests of copyright owners with the public's right to access, use, and enjoy copyrighted works.

PART II –THE KENYA COPYRIGHT AUTHORITY

Establishment
of the
Authority.

4. (1) There is established the Kenya Copyright Authority.

(2) The Authority is a body corporate with perpetual succession and a common seal and which shall be capable, in its corporate name of—

- (a) suing and being sued;
- (b) purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) entering into contracts;
- (d) borrowing and lending money; and
- (e) doing or performing all such other things or acts as may be necessary for the proper performance of its functions under this Act which may lawfully be done by a body corporate.

Functions of
the Authority

5. The functions of the Authority are to—

- (a) oversee the implementation of this Act and international treaties and conventions relating to copyright and related rights to which Kenya is a party;
- (b) establish, maintain and manage a system of voluntary national registration of copyright and related rights;

- (c) advise the government on the negotiation, conclusion and implementation of bilateral and multilateral agreements on copyright and related rights;
- (d) advise the cabinet secretary on all aspects relating to copyright and related rights;
- (e) regulate the collective management organizations;
- (f) offer public education and provide technical assistance on matters of copyright and related rights;
- (g) undertake research on copyright and related rights; and
- (h) carry out any other function as may be assigned by the cabinet Secretary or any other written law.

Powers of the Authority.

6. The Authority shall have all the powers necessary for the proper performance of its functions under this Act including the power to—

- (a) enter, inspect and search any premises to enforce the Act;
- (b) impose sanctions for breach of this Act; and
- (c) charge fees and levies for proper carrying out of functions under the Act.

Board of the Authority.

7. (1) There shall be a Board of the Authority which shall consist of—

- (a) the chairperson appointed by the President;
- (b) the Principal Secretary for National Treasury or a designated representative;
- (c) the Principal Secretary in the State Department responsible for matters relating to copyright or a designated representative;
- (d) the Attorney-General or a designated representative;

- (e) four persons, appointed by the Cabinet Secretary, each nominated by associations recognized as representing stakeholders in each of the following sectors—
 - (i) music;
 - (ii) film;
 - (iii) visual arts; and
 - (iv) publishing;
- (f) one person appointed by the Cabinet Secretary through a formal process;
- (g) the Executive Director, who shall be an *ex-officio* member.

(2). A person shall qualify for appointment as the Chairperson if the person—

- (a) holds an undergraduate degree from a university recognized in Kenya;
- (b) has at least Fifteen years' experience in leadership and management; and
- (c) meets the requirements of Chapter Six of the Constitution.

(3) A person shall be qualified for appointment as a member of the Board under subsection (1)(e) if the person—

- (a) holds an undergraduate degree from a university recognized in Kenya;
- (b) possesses at least ten years' experience in intellectual properties, finance, law, social sciences or any other relevant field.

(4) The Chairperson and the members of the Board shall hold office for a term of three years and shall be eligible for reappointment for one further term.

(5) A member of the Board shall be paid such allowances as the Cabinet Secretary may in consultation with the Salaries and Remuneration Commission determine.

Vacation of
office

8. A member of the Board shall cease to hold office—

- (a) upon the expiry of their term of appointment;
- (b) upon resignation;
- (c) if absent without the permission of the Chairperson from three consecutive meetings of the Board;
- (d) if convicted of an offence and sentenced to imprisonment for a term exceeding six months;
- (e) if adjudged bankrupt; and
- (f) if is incapacitated by prolonged physical or mental illness and incapable of discharging their

Powers of the
Board

9. The Board shall have power to—

- (a) control, supervise and administer the assets of the Authority;
- (b) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Authority;
- (c) enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate; and
- (d) approve the program of activities, annual reports, budgets, and accounts of the Authority

Conduct of
business and
affairs of the
Board

10. (1) The business and affairs of the Board shall be conducted in accordance with section 8 of the State Corporation Act.

(2) Except as provided in the Act, the Board may regulate its own procedure.

(3) The Board may, in writing, delegate the exercise of any of the powers or the performance of any of the functions of the Board under this Act.

(4) Any function or power delegated under this section shall be performed and exercised in the name and on behalf of the Authority.

Executive
Director.

11. (1) There shall be the Executive Director of the Authority, who shall be competitively appointed by the Board on such terms and conditions as the Board shall determine.

(2) The Executive Director shall be responsible for—

- (a) management of the day-to-day business of the Authority;
- (b) general supervision of the officers and staff of the Authority;
- (c) carrying out the decisions of the Board;
- (d) preparation of strategies, policies and programs, for the consideration of the Board;
- (e) the execution of the strategies, programs and policies, of the Authority; and
- (f) perform any other function incidental to the functions of the Authority.

(3) The Chief Executive Officer shall be appointed for a term of four years and shall be eligible for reappointment for one further term.

(4) A person shall be qualified for appointment as Executive Director if the person—

- (a) holds a postgraduate degree from a university recognized in Kenya;
- (b) has at least fifteen years managerial experience in matters relating to intellectual properties, finance, law, social sciences or any other relevant field;
- (c) has technical knowledge and proven expertise in matters relating to intellectual properties; and

(d) meets the requirements of Chapter Six of the Constitution.

(5) The Executive Director shall be appointed for a term of four years and shall be eligible for reappointment for one further term.

Corporation
Secretary

12. (1) There shall be a Corporation Secretary appointed by the Board.

(2) The corporation secretary shall—

- (a) be the secretary to the Board;
- (b) in consultation with the chairperson of the Board and the Executive Director, issue notices for meetings of the Board;
- (c) record and keep minutes and other records of the Board;
- (d) carry out such other functions as the Board or Executive Director may assign.

Staff of the
Authority

13. The Board shall appoint such number of staff as may be necessary for the efficient discharge of the functions of the Authority.

Seal and
execution of
documents

14. (1) The common seal of the Authority shall be kept in the custody of the Corporation Secretary.

(2) The common seal shall not be affixed to any instrument or document except as may be authorized by the Board.

(3) The affixing of the common seal of the Authority shall be authenticated by the signature any two directors or a director and the corporation secretary

Financial
Provisions.

15. (1) The funds of the Authority shall consist of—

- (a) such monies as may be appropriated by the National Assembly;

- (b) such monies as may accrue or vest in the Authority in the course of the exercise of its powers or the performance of its functions;
- (c) grants, donations or gifts to the Authority; and
- (d) any monies accruing to the Authority from any other source.

(2) Subject to the provisions of this Act or any other law, the Authority shall have the power to use the funds of the Authority to carry out its functions.

(3) The Board and the Executive Director shall manage the finances of the Authority accordance with the Public Finance Management Act, 2012 any other relevant law.

(4) The accounts of the Authority shall be audited and reported in accordance with the Public Audit Act, 2015.

Annual report
of the
Authority.

16. The Authority shall, three months after the end of each financial year, prepare and submit to the Cabinet Secretary an annual report relating to the operations of the Authority.

PART III – SUBSISTENCE, OWNERSHIP AND DURATION OF COPYRIGHT

Works eligible
for copyright.

17. (1) Copyright is a property right which subsists in accordance with this Act in original works of the following descriptions—

- (a) literary, musical; artistic works; dramatic works;
- (b) audio-visual works, sound recordings, and broadcasts;
- (c) the typographical arrangement of published editions.

(2) Copyright shall not subsist in any work unless it has been independently created by the author and possesses a minimum amount of creativity.

(3) A work is not original if—

- (a) it is, or to the extent that it is, a copy of another work; or

- (b) it infringes the copyright in, or to the extent that it infringes the copyright in, another work.

(4) The absence of registration or other formalities shall not preclude the author from asserting their claim to copyright.

Recording
necessary for
some works

18. (1) Copyright shall not subsist in a literary or dramatic or musical work unless and until the work is recorded, in writing or otherwise.

(2) It is immaterial for the purposes of subsection (1) whether the work is recorded by or with the consent of the author.

(3) Where a work is not recorded by the author, the question whether copyright exists in the record, as distinct from the work recorded, is not affected by anything in subsection (1).

(4) The protection accorded by copyright shall be granted automatically to the author upon the recording of the copyright work in a material form.

Exclusive
Rights in
Works.

19. (1) The owner of the copyright in a work has the exclusive right to do the following acts in Kenya—

- (a) to copy the work;
- (b) to issue copies of the work to the public, whether by sale or otherwise;
- (c) to perform the work in public;
- (d) to play the work in public;
- (e) to show the work in public;
- (f) to communicate the work to the public;
- (g) to make an adaptation of the work;
- (h) to do any of the acts referred to in any of paragraphs (a) to (f) in relation to an adaptation of the work;
- (i) to authorise another person to do any of the acts referred to in any of paragraphs (a) to (h).

(2) In relation to an architectural work, copyright includes the exclusive right to control the construction of any building which replicates the whole or a substantial part of the original work or any recognizably derived form.

(3) Despite subsection (2), the copyright shall not extend to control over the reconstruction of a building in the original style of the copyrighted architectural work.

(4) The exclusive rights conferred by this section are subject to limitations as provided in this Act.

Qualification
for copyright.

20. Copyright does not subsist in a work unless the following qualification under this Act are satisfied as regards to—

- (a) the author;
- (b) the country in which the work was first published; and
- (c) in the case of a broadcast the country from which the broadcast was made.

Qualification
by reference to
author.

21. (1) A work qualifies for copyright protection if the author was at the material time a qualifying person, that is—

- (a) a Kenyan citizen; or
- (b) an individual domiciled or resident in Kenya;
- (c) a body incorporated under the law of Kenya; or
- (d) a citizen or subject of a prescribed foreign country; or
- (e) a body incorporated under the law of a prescribed foreign country.

(2) Where a work of joint authorship qualifies for copyright under this section alone, only those authors who satisfy the requirements of subsection (1) shall be taken into account for the purposes of the application, to that work of the provisions of this Act which relates to—

- (a) the first ownership of copyright;
- (b) the duration of copyright in literary, dramatic, musical, or artistic works;
- (c) acts permitted on assumptions as to expiry of copyright or death of the author in relation to anonymous or pseudonymous works.

Qualification
by reference to
country of first
publication

22. (1) Every eligible work, excluding broadcasts, shall be conferred with copyright under the following conditions—

- (a) In the case of literary, musical, dramatic, artistic, or audio-visual works, if the work is first published in Kenya or a country that is a signatory to a treaty offering copyright and related rights protection to which Kenya is also a party;
- (b) In the case of sound recordings, if the recording is made or first published in Kenya or a country that is a signatory to a treaty offering copyright and related rights protection to which Kenya is also a party;
- (c) In the case of broadcasts, if the transmission is made from transmitters located within Kenya;

(2) If the work is first published in a Berne Convention country and is not simultaneously published elsewhere, the country of origin is that country.

(3) If the work is first published simultaneously in two or more countries only one of which is a Berne Convention country, the country of origin is that country.

(4) If the work is first published simultaneously in two or more countries of which two or more are Berne Convention countries, then—

- (a) if Kenya is one of those countries, the country of origin is Kenya; and

- (b) if Kenya is not one of those countries, the country of origin is the Berne Convention country which grants the shorter or shortest period of copyright protection.

First
ownership of
copyright.

23. (1) The author of a work is the first owner of any copyright in it, subject to the following provisions.

(2) Where a literary, dramatic, musical or artistic work, or a film, is made by an employee in the course of their employment, their employer is the first owner of any copyright in the work subject to any agreement to the contrary.

(3) if without such commission, a work is created during the course of the author's employment under a contract of service, the copyright shall be deemed to be transferred to the person who commissioned the work or the author's employer, unless an agreement between the parties exists that limits or excludes this transfer.

Duration of
copyright

24. (1) The duration of copyright for works eligible for copyright protection shall be as follows—

- (a) for literary, musical, dramatic, or artistic works, excluding photographs, copyright shall subsist for fifty years following the end of the calendar year in which the author dies;
- (b) for audio-visual works and photographs, copyright shall subsist for fifty years from the end of the calendar year in which the work was created, first made available to the public, or first published, whichever is the latest;
- (c) for sound recordings, copyright shall subsist for fifty years following the end of the calendar year in which the recording was made;
- (d) for broadcasts, copyright shall subsist for fifty years following the end of the calendar year in which the broadcast took place;
- (e) for anonymous or pseudonymous literary, musical, dramatic, or artistic works, copyright shall subsist for fifty years from the end of the calendar year in which the work was first published.

(2) If the identity of the author becomes known within this period, the duration of copyright shall be calculated as per subsection (1)(a).

(3) In the case of a work of joint authorship, references in this section to the death of the author shall be construed as references to the death of the last surviving author, and the term of copyright protection shall be calculated according to subsection (1)(a) based on the year in which the last of the authors dies.

Duration for
foreign works

25. (1) Where the country of origin of the work is not Kenya and the author of the work is not a Kenyan national, the duration of copyright is that to which the work is entitled in the country of origin, provided that does not exceed the period which would apply under subsections (2) to (4).

(2) If the work is computer-generated the above provisions do not apply and copyright expires at the end of the period of 50 years from the end of the calendar year in which the work was made.

(3) The provisions of this section are adapted as follows in relation to a work of joint authorship or a work of co-authorship the reference to the death of the author shall be construed—

- (a) if the identity of all the authors is known, as a reference to the death of the last of them to die, and
- (b) if the identity of one or more of the authors is known and the identity of one or more others is not, as a reference to the death of the last whose identity is known.

Copyright in
Government
works

26. (1) Where a work is made by a person employed or engaged by the Government under a contract of service, a contract of apprenticeship, or a contract for services, —

- (a) the work qualifies for copyright; and
- (b) the Government is the first owner of any copyright in the work.

(2) Government copyright shall expire,—

- (a) in the case of a typographical arrangement of a published edition, at the end of the period of 25 years from the end of the calendar year in which the work is made;

- (b) in the case of any other work, at the end of the period of 50 years from the end of the calendar year in which the work is made.

(2) In the case of a work of joint authorship where one or more, but not all, of the authors are persons employed or engaged by the Government under a contract of service, a contract of apprenticeship, or a contract for services, this section applies only in relation to those authors and the copyright existing by virtue of their contribution to the work.

(3) Subsection (1) applies subject to any agreement to the contrary.

Copyright vesting in certain international organisations.

27. (1) Where an original literary, dramatic, musical or artistic work—

- (a) is made by an officer or employee of, or is published by, an international organisation to which this section applies, and
- (b) does not qualify for copyright protection under qualification by reference to author or qualification by reference to country of first publication), copyright nevertheless subsists in the work by virtue of this section and the organisation is first owner of that copyright.

(2) Copyright of which an international organisation is first owner by virtue of this section continues to subsist until the end of the period of 50 years from the end of the calendar year in which the work was made or such longer period as may be for the purpose of complying with the international obligations of Kenya.

Works not eligible for copyright

28. The following shall not be eligible for copyright protection—

- (a) Idea, procedure, system, method of operation, concept, principle, discovery or mere data or things of similar nature;
- (b) an enactment including an Act, statutory instruments, or other law made by a legislature or other authorised body;
- (c) decree, order, or other decision by a court or any organ for the administration of justice;

- (d) a report made by a committee or commission appointed by Government or any agency of Government;
- (e) news of the day namely reports of fresh events or current information by the media whether published in a written form, broadcast, internet or communicated to the public by any other means;
- (f) political speeches; and
- (g) National emblems, flags and symbols, national symbols and emblems of Kenya and other sovereign countries.

Works in
public domain

29. (1) The following works shall belong to the public domain—

- (a) works whose terms of protection have expired;
- (b) works in respect of which authors have renounced their rights; and
- (c) foreign works which do not enjoy protection in Kenya.

(2) For the purposes of paragraph (b), renunciation by an author or their successor in title of their rights shall be in writing and made public but any such renunciation shall not be contrary to any previous contractual obligation relating to the work.

(3) This section shall apply, with necessary modifications, to performances, sound recordings audio-visual fixation broadcasts and typographical arrangements whose terms of protection have expired, or to which the owners of the rights have renounced their rights.

(4) A work which has fallen into the public domain may be used without any restriction.

Register of
copyright
works

30. (1) The Authority shall establish and maintain the National Rights Registry of works protected under this Act.

(2) A work eligible for copyright may be entered on the register upon application by the author, owner, assignee, or licensee of the work.

(3) The National Rights Registry shall fulfil the following purposes—

- (a) record and register the right holders and their works;
- (b) authenticate ownership of copyright and related rights;
- (c) make available data of registered copyright works;
- (d) serve as a basis for determining eligibility for statutory damages provided under this Act;
- (e) fulfil any other purpose as determined by the Authority.

(4) Where a copyright work is used as security, the interest may be registered in the Registry for the duration of the undischarged security.

PART IV – ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS

Introductory provisions.

31. (1) The provisions of this Part specify acts which may be done in relation to copyright works despite the subsistence of copyright.

(2) These acts relate only to the question of infringement of copyright and do not affect any other right or obligation restricting the doing of any of the specified acts.

(3) Where it is provided by this Part that an act does not infringe copyright, or may be done without infringing copyright, and no particular description of copyright work is mentioned, the act in question does not infringe the copyright in a work of any description.

Permitted acts in general.

32. The exclusive rights conferred by copyright shall not extend to control over the following uses, provided the author is acknowledged—

- (a) fair dealing for purposes including research, private use, criticism, review, commentary, education, teaching, scholarship, facilitating access to works for persons with disabilities or the reporting of current events;

- (b) the use of the work in creating parody, pastiche or caricature;
- (c) quotations from the work, provided that the extent of quotation is compatible with fair practice;
- (d) use of work in judicial proceedings or the reporting of such proceedings;
- (e) reproduction and distribution of copies or the inclusion in an audio-visual work or broadcast, of an artistic work situated in a place where it can be viewed by the public;
- (f) incidental inclusion of a copyright work in an artistic work, sound recording, audio visual work or broadcast;
- (g) public reading or recitation or broadcast by one person of any reasonable extract from a published literary work.

Making of temporary copies.

33. Copyright in a work, other than a computer program or a database, is not infringed by the making of a temporary copy which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable—

- (a) a transmission of the work in a network between third parties by an intermediary; or
- (b) a lawful use of the work; and which has no independent economic significance.

Copies for private and personal use.

34. (1) The making of a copy of a work, other than a computer program, by an individual does not infringe copyright in the work provided that the copy is—

- (a) a copy of the individual's own copy of the work, or a personal copy of the work made by the individual;
- (b) made for the individual's private use; and
- (c) made for ends which are neither directly nor indirectly commercial.

- (2) In this section “the individual’s own copy” is a copy which—
- (a) has been lawfully acquired by the individual on a permanent basis;
 - (b) is not an infringing copy; and
 - (c) has not been made under any provision of this Part which permits the making of a copy without infringing copyright.

(3) In subsection (1)(b) “private use” includes private use facilitated by the making of a copy—

- (a) as a backup copy;
- (b) for the purposes of format-shifting; or
- (c) for the purposes of storage, including in an electronic storage area accessed by means of the internet or similar means which is accessible only by the individual and the person responsible for the storage area.

(4) To the extent that a term of a contract purports to prevent or restrict the making of a copy which, by virtue of this section, would not infringe copyright, that term is unenforceable.

Research and
private study.

35. (1) Fair dealing with a work for the purposes of private study does not infringe any copyright in the work.

(2) Fair dealing with a work for the purposes of research for a non-commercial purpose does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement.

(3) No acknowledgement is required in connection with fair dealing for the purposes mentioned in subsection (2) where this would be impossible for reasons of practicality or otherwise.

(4) Copying by a person other than the researcher or student themselves is not fair dealing if—

- (a) in the case of a librarian, or a person acting on behalf of a librarian, that person does anything which is not permitted by copying by librarians of single copies of published works); or
- (b) in any other case, the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose.

Copies for text
and data
analysis for
non-
commercial
research.

36. (1) The making of a copy of a work by a person who has lawful access to the work does not infringe copyright in the work provided that—

- (a) the copy is made in order that a person who has lawful access to the work may carry out a computational analysis of anything recorded in the work for the sole purpose of research for a non-commercial purpose, and
- (b) the copy is accompanied by a sufficient acknowledgement, unless this would be impossible for reasons of practicality or otherwise.

(2) Where a copy of a work has been made under this section, copyright in the work is infringed if—

- (a) the copy is used for any purpose other than that mentioned in subsection (1) (a), except where the use is authorised by the copyright owner.

(3) If a copy made under this section is subsequently dealt with—

- (a) it is to be treated as an infringing copy for the purposes of that dealing; and
- (b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes.

Criticism,
review
quotation and
news
reporting.

37. (1) Fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work, does not infringe any copyright in the work provided that—

- (a) it is accompanied by a sufficient acknowledgement, unless this would be impossible for reasons of practicality or otherwise; and
- (b) the work has been made available to the public.

(2) Copyright in a work is not infringed by the use of a quotation from the work, whether for criticism or review or otherwise, provided that—

- (a) the work has been made available to the public;
- (b) the use of the quotation is fair dealing with the work;
- (c) the extent of the quotation is no more than is required by the specific purpose for which it is used; and
- (d) the quotation is accompanied by a sufficient acknowledgement, unless this would be impossible for reasons of practicality or otherwise.

(3) For the purposes of this section, a work has been made available to the public if it has been made available by any means, including—

- (a) the issue of copies to the public;
- (b) making the work available by means of an electronic retrieval system;
- (c) the rental or lending of copies of the work to the public;
- (d) the performance, exhibition, playing or showing of the work in public;
- (e) the communication to the public of the work, but in determining generally for the purposes of those subsections whether a work has been made available to the public no account shall be taken of any unauthorised act.

(4) Fair dealing with a work (other than a photograph) for the purpose of reporting current events does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement.

(3) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film or broadcast where this would be impossible for reasons of practicality or otherwise.

Incidental inclusion of copyright material.

38. (1) Copyright in a work is not infringed by its incidental inclusion in an artistic work, sound recording, film or broadcast.

(2) Nor is the copyright infringed by the issue to the public of copies, or the playing, showing or communication to the public, of anything whose making was, by virtue of subsection (1), not an infringement of the copyright.

(3) A musical work, words spoken or sung with music, or so much of a sound recording or broadcast as includes a musical work or such words, shall not be regarded as incidentally included in another work if it is deliberately included.

Lending of copies libraries and archives.

39. (1) Copyright in a work of any description is not infringed by the following acts by a library in relation to a book within the—

- (a) lending the book;
- (b) in relation to an audio-book or e-book, copying or issuing a copy of the book as an act incidental to lending it.

(2) Copyright in a work is not infringed by a library, an archive, a museum, and an educational establishment communicating the work to the public or making it available to the public by means of a dedicated terminal on its premises, if the conditions in subsection (3) are met.

(3) The conditions are that the work or a copy of the work—

- (a) has been lawfully acquired by the institution; and
- (b) is communicated or made available to individual members of the public for the purposes of research or private study,

(4) The institutions under sub section (2) are permitted to undertake the following acts, provided that the acts are in the public interest and no revenue is derived therefrom—

- (a) reproduce a work;
- (b) make copies of a book, which includes pamphlets, sheet music, maps, charts, or plans, under the direction of-
 - (i) person in charge of a public library, for the use of the library; or
 - (ii) Archives, for purposes of archiving and preservation when such works are not available in Kenya;
- (c) replace a copy of a work in the collection of a public library or archives, by making a copy if the original is damaged, deteriorating, lost, stolen, fragile, or in an obsolete storage format and a replacement copy cannot be obtained in Kenya at a reasonable price;
- (d) make copies of the works in the collections of a library or archives as reasonably necessary for preservation and security.

Anthologies
for educational
use.

40. (1) The inclusion of a short passage from a published literary or dramatic work in a collection which is intended for use in educational establishments and the inclusion is accompanied by a sufficient acknowledgement.

(2) References in this section to the use of a work in an educational establishment are to any use for the educational purposes of such an establishment.

(3) The performance of a literary, dramatic or musical work before an audience consisting of teachers and pupils at an educational establishment and other persons directly connected with the activities of the establishment—

- (a) by a teacher or pupil in the course of the activities of the establishment, or

- (b) at the establishment by any person for the purposes of instruction, is not a public performance for the purposes of infringement of copyright.

(4) The playing or showing of a sound recording, film or broadcast before such an audience at an educational establishment for the purposes of instruction is not a playing or showing of the work in public for the purposes of infringement of copyright, provided that—

- (a) the educational purposes are non-commercial, and
- (b) the recording or copy is accompanied by a sufficient acknowledgement, unless this would be impossible for reasons of practicality or otherwise.

General
exclusion for
educational
institutions.

41. (1) The exclusive rights conferred by copyright shall not extend to the following activities conducted by educational institutions —

- (a) the inclusion in a collection of literary or musical works from the work in question if the collection is designed for use in an educational institution and includes an acknowledgement of the work's title and authorship;
- (b) the reproduction of published articles, other short works, or short extracts of works for teaching purposes in educational institutions that do not serve direct or indirect commercial gain;
- (c) communication, broadcasting, or making a work available to a defined community of learners or researchers, intended for research or systematic instructional activities;
- (d) the reproduction of a broadcast and the use of that reproduction in an educational institution for the systematic instructional activities;
- (e) the making available of copyright works for instruction and educational purposes for online learning in computer networks, with access to the works limited to enrolled students and their teachers.

(2). Despite the provisions in subsection (1), if a licensed collective management organization for reprographic rights exists, a reprographic license must be obtained for any use beyond the uses authorized by this section.

Copying and
use of extracts
of works by
educational
establishments

42. (1) The copying of extracts of a relevant work by or on behalf of an educational establishment does not infringe copyright in the work, provided that—

- (a) the copy is made for the purposes of instruction for a non-commercial purpose, and
- (b) the copy is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).

(2) Copyright is not infringed where a copy of an extract made under subsection (1) is communicated by or on behalf of the educational establishment to its pupils or staff for the purposes of instruction for a non-commercial purpose.

(3) Subsection (2) only applies to a communication received outside the premises of the establishment if that communication is made by means of a secure electronic network accessible only by the establishment's pupils and staff.

(4) Acts which would otherwise be permitted by this section are not permitted if, or to the extent that, licenses are available authorising the acts in question and the educational establishment responsible for those acts knew or ought to have been aware of that fact.

(5) The terms of a license granted to an educational establishment authorizing acts permitted by this section are of no effect so far as they purport to restrict the proportion of a work which may be copied (whether on payment or free of charge) to less than that which would be permitted by this section.

(6) If a copy made under this section is subsequently dealt with—

- (a) it is to be treated as an infringing copy for the purposes of that dealing; and
- (b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes.

Illustration for
instruction

43. (1) Fair dealing with a work for the sole purpose of illustration for instruction does not infringe copyright in the work provided that the dealing is—

- (a) for a non-commercial purpose;

- (b) by a person giving or receiving instruction (or preparing for giving or receiving instruction), and
- (c) accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).

(2) For the purposes of subsection (1), “giving or receiving instruction” includes setting examination questions, communicating the questions to pupils and answering the questions.

(3) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.

Back up and
decompilation
for computer
programme.

44. (1) It is not an infringement of copyright for a lawful user of a copy of a computer program to —

- (a) make any back up copy of it which it is necessary for him to have for the purposes of them lawful use;
- (b) copies of the program to the extent necessary to correct errors;
- (c) make a back-up copy for safeguarding the program;
- (d) test the program to assess its suitability for the use; or
- (e) for any other purpose not prohibited under any license or agreement permitting the use the program.

(2) The right holder’s authorization is not required for decompiling the program or converting it into a different programming language, code, or notation for the purpose of obtaining information necessary for interoperability with other programs.

(3) Any copies made under this section shall be used only for the purpose for which it was made and must be destroyed when the person's possession of the computer program ceases to be lawful.

(4) It is not an infringement of copyright for a lawful user of a copy of a computer program to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.

Exceptions
and limitations
for
broadcasting

45. (1) Notwithstanding the exclusive rights conferred by copyright, such rights shall not include the right to control—

- (a) the reproduction of a work by a broadcasting station or under its direction or control, where—
 - (i) such reproduction or copies thereof are intended solely for broadcast by the said broadcasting station;
 - (ii) the broadcasting station has obtained authorization from the copyright owner of the work;
 - (iii) the reproduction or copies are destroyed within a period of six calendar months following the making of the reproduction or such longer period as may be mutually agreed upon between the broadcasting authority and the copyright owner, and
 - (iv) despite subparagraph (iii), a reproduction which is of an exceptional documentary character may be preserved in the archives of the broadcasting station, but shall not be used for broadcasting or for any other purpose without the consent of the copyright owner;
- (b) the broadcasting of literary, musical, or artistic works or audio-visual works, which are already lawfully accessible to the public, provided that—
 - (i) no licensing body is involved, and
 - (ii) the owner of the broadcasting right receives fair compensation, which shall be determined by the Tribunal in the absence of an agreement between the parties.

Exceptions
and limitations
for visually
impaired
persons

- 46.** (1) This section applies if—
- (a) a disabled person has lawful access to a copy of the whole or part of a work; and
 - (b) the person’s disability prevents the person from enjoying the work to substantially the same degree as a person who does not have that disability.

(2) The making of an accessible copy of the copy of the work referred to in subsection (1) (a) does not infringe copyright if the copy is made by the disabled person and or by a person acting on behalf of the disabled person, the copy is made for the disabled person’s personal use.

(3) Copyright is infringed by the transfer of an accessible copy of a work made under this section to any person other than—

- (a) a person by or for whom an accessible copy of the work may be made under this section, or
- (b) a person who intends to transfer the copy to a person falling within paragraph (a), except where the transfer is authorised by the copyright owner.

(4) An accessible copy of a work made under this section is to be treated for all purposes as an infringing copy if it is held by a person at a time when the person does not fall within subsection (4)(a) or (b).

(5) If an accessible copy made under this section is subsequently dealt with—

- (a) it is to be treated as an infringing copy for the purposes of that dealing; and
- (b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes.

Use of notes
or recordings
of spoken

- 47.** (1) Where a record of spoken words is made, in writing or otherwise, for the purpose—

words in
certain cases.

- (a) of reporting current events; or
 - (b) of communicating to the public the whole or part of the work, it is not an infringement of any copyright in the words as a literary work to use the record or material taken from it (or to copy the record, or any such material, and use the copy) for that purpose, provided the following conditions are met.
- (2) The conditions are that—
- (a) the record is a direct record of the spoken words and is not taken from a previous record or from a broadcast;
 - (b) the making of the record was not prohibited by the speaker and, where copyright already subsisted in the work, did not infringe copyright;
 - (c) the use made of the record or material taken from it is not of a kind prohibited by or on behalf of the speaker or copyright owner before the record was made; and
 - (d) the use is by or with the authority of a person who is lawfully in possession of the record.

Material open
to public
inspection or
on official
register.

48. (1) Where material is open to public inspection pursuant to a statutory requirement, or is on a statutory register, any copyright in the material as a literary work is not infringed by the copying of so much of the material as contains factual information of any description, by or with the authority of the appropriate person, for a purpose which does not involve the issuing of copies to the public.

(2) Where material is open to public inspection pursuant to a statutory requirement, copyright in the material is not infringed by an act to which subsection (4) applies provided that—

- (a) the act is done by or with the authority of the appropriate person;
- (b) the purpose of the act is—
 - (i) to enable the material to be inspected at a more convenient time or place, or
 - (ii) to otherwise facilitate the exercise of any right for the purpose of which the statutory requirement is imposed, and

- (c) in the case of the act specified in subsection 4) (c), the material is not commercially available to the public by or with the authority of the copyright owner.

(3) Where material which contains information about matters of general scientific, technical, commercial or economic interest is on a statutory register or is open to public inspection pursuant to a statutory requirement, copyright in the material is not infringed by an act to which subsection (4) applies provided that—

- (a) the act is done by or with the authority of the appropriate person;
- (b) the purpose of the act is to disseminate that information; and
- (c) in the case of the act specified in subsection (4)(c), the material is not commercially available to the public by or with the authority of the copyright owner.

(4) This subsection applies to any of the following acts—

- (a) copying the material;
- (b) issuing copies of the material to the public, and
- (c) making the material (or a copy of it) available to the public by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.

Acts done
under statutory
authority.

49. (1) Where the doing of a particular act is specifically authorised by an Act of Parliament, whenever passed, then, unless the Act provides otherwise, the doing of that act does not infringe copyright.

(2) Subsection (1) applies in relation to an enactment contained in legislation as it applies in relation to an Act of Parliament.

(3) Nothing in this section shall be construed as excluding any defence of statutory authority otherwise available under or by virtue of any enactment.

PART V- PROVISIONS ON RELATED RIGHTS

Broadcasting
of works
incorporated
in audio-visual
works

50. (1) Where the owner of the copyright in any literary, musical, dramatic or artistic work authorizes a person to incorporate the work in audio-visual works, and a broadcasting authority broadcasts such audio-visual works, unless there is express agreement to the contrary, such broadcast shall be deemed as authorized by the copyright owner.

(2) Despite subsection (1), where a broadcasting authority broadcasts audio-visual works incorporating musical work, the owner of the right to broadcast the musical work shall, subject to the provisions of this Act, be entitled to receive fair compensation from the broadcasting authority.

Nature of
copyright in
sound
recordings

51. (1) The copyright in sound recordings shall confer upon the owner the exclusive right to control within Kenya the following acts in respect of the sound recording the—

- (a) the direct or indirect reproduction in any manner or form;
- (b) the distribution to the public of copies by way of sale, rental, lease, hire, loan or any similar arrangements;
- (c) the making available of the sound recording in whole or in part either in its original form or in any form recognizably derived from the original;
- (d) the importation into Kenya of copies of the sound recording; or
- (e) the communication to the public or the broadcasting of the sound recording, in whole or in part, whether in its original form or in any form recognizably derived from the original.

(2) Notwithstanding subsection (1), the rights of an owner of copyright in a sound recording shall not be infringed by the making of a single copy of the recording for personal and private use, subject to the right of the owner to receive fair compensation.

(3) The compensation payable shall be by way of a royalty levied on audio recording equipment and media suitable for recording, payable at the

point of first manufacture or entry into Kenya by the manufacturer or importer thereof.

(4) Any person who, with commercial intent, makes available any audio recording equipment for the purpose of enabling another person to make single copies of a sound recording for personal or private use, without the payment of the royalty referred to in this section, commits an offence and shall be liable, upon conviction, to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding four years, or to both.

Nature of
copyright
broadcasts

52. (1) Copyright in a broadcast shall confer upon the owner the exclusive right within Kenya to control the following acts in relation to the broadcast—

- (a) the fixation of the whole or a substantial part of the broadcast;
- (b) the rebroadcasting of the whole or a substantial part of the broadcast;
- (c) the communication to the public of the whole or a substantial part of a television broadcast, whether in its original form or in any form recognizably derived from the original;
- (d) the retransmission of the broadcast over any network;
- (e) the decryption in any way or form any encrypted broadcast; or
- (f) any adaptation or modification of the broadcast, including addition of commentaries, or any unauthorized use of the broadcast or pre-broadcast signal intended for reception by another broadcaster.

(2) The copyright in a television broadcast shall further include the right to control the taking of still photographs from the broadcast.

(3) The acts controlled under subsection (1) shall be subject to the general exceptions on the provisions regarding educational institutions outlined in this Act.

Rights of
performers

53. (1) A performer shall have the exclusive right to carry out any of the following acts —

- (a) publicly perform their work;
- (b) broadcast his performance, unless the broadcast is made from an authorised fixation of the performance;
- (c) communicate their performance to the public, unless the communication is made from an authorized fixation or broadcast of the performance;
- (d) fix an unfixed performance; and
- (e) reproduce a fixation of the performance in cases where the initial fixation was made without the performer's authorization, or the reproduction is made for purposes different from those originally authorized by the performer;
- (f) rent the original and copies of their fixed performances to the public for commercial purposes;
- (g) distribute to the public a fixation of their performance or copies thereof;
- (h) make their fixed performance available to the public, by wire or wireless means, in a way that allows individual public access from a chosen place or time.

(2) Unless there is a contractual agreement stating otherwise, the following principles apply—

- (a) the authorization to broadcast does not imply an authorization to license other organizations to broadcast the performance;
- (b) the authorization to broadcast does not imply an authorization to fix the performance; and
- (c) the authorization to both broadcast and fix the performance does not imply an authorization to reproduce the fixation.

(3) A performer or a duly appointed representative can provide binding authorization under this section in writing.

(4) Any authorization provided by a performer claiming to retain relevant rights, or by someone claiming to be a duly appointed representative, is considered valid.

(5) The rights of the performer under this section shall last for fifty years after the end of the year in which the performance was fixed.

(6) The performer shall, during their lifetime, in relation to live performances or performances fixed in phonograms, have the right, independently of their economic rights, to—

- (a) be acknowledged as the performer of their performance and to object to any distortion, mutilation, or modification of the performance that is detrimental to their reputation; and
- (b) prevent or seek relief from any distortion, mutilation, or other modification, or any other derogatory action related to their work, that could or does harm their honor or reputation.

(7) The rights of an owner of a copyright in a fixation of their performance are not infringed by the making of a single copy of the performance for the personal and private use of the person making the copy.

(8) In respect of such use, the owner of a related right in the performance shall have the right to receive fair compensation in form of a royalty levied on audio-visual recording equipment or audio-visual blank media suitable for recording and other media intended for recording.

(8) The compensation shall be payable at the point of first manufacture or entry in Kenya by the manufacturer or importer of such equipment or media.

Single
equitable
remuneration
for
exploitation of
Audiovisual
works

54. (1) A performer shall have the un-waivable and untransferable rights to receive equitable remuneration or royalties in respect of any broadcast, communication to the public, rental or making available to the public of his performance fixed in an audio-visual fixation.

(2) The right to equitable remuneration under this section may not be assigned by the performer except to a collecting society for the purpose of enabling it to enforce the right on his behalf.

(3) The right is, however, transmissible by testamentary disposition or by operation of law as personal or moveable property; and it may be assigned or further transmitted by any person into whose hands it passes.

(4) The amount payable by way of equitable remuneration is as agreed by or on behalf of the persons by and to whom it is payable, subject to the following provisions.

(5) In default of agreement as to the amount payable by way of equitable remuneration, the person by or to whom it is payable may apply to the Copyright Tribunal to determine the amount payable.

(6) A person to or by whom equitable remuneration is payable may also apply to the Tribunal—

(a) to vary any agreement as to the amount payable, or

(b) to vary any previous determination of the Tribunal as to that matter;

(7) Except with the special leave of the Tribunal no such application may be made within twelve months from the date of a previous determination.

(8) The right to an equitable remuneration under this Section shall subsist from the date of publication of the audiovisual performance until the end of the fiftieth calendar year following the year of publication, provided that the audiovisual work/performance is still protected under the Act.

(9) The remuneration or royalty shall be managed through the relevant collective management organization.

Duration of
rights.

55. (1) The following provisions have effect with respect to the duration of the rights conferred by this part.

(2) The rights conferred by in relation to a performance expire—

(a) at the end of the period of 50 years from the end of the calendar year in which the performance takes place, or

(b) if during that period a recording of the performance, other than a sound recording, is released, 50 years from the end of the calendar year in which it is released, or

- (c) if during that period a sound recording of the performance is released, 50 years from the end of the calendar year in which it is released, subject as follows.

(3) For the purposes of subsection (2) a recording is “released” when it is first published, played or shown in public or communicated to the public; but in determining whether a recording has been released no account shall be taken of any unauthorized act.

(4) Where a performer is not a national of Kenya the duration of the rights conferred by this Chapter in relation to his performance is that to which the performance is entitled in the country of which he is a national, provided that does not exceed the period which would apply under subsections (2) and (3).

Private
Copying
Remuneration

56. (1) The rights of an owner of the copyright or related rights’ holders are not infringed by the making of a single copy of the work or recording for the personal and private use of the person making the copy.

(2) In respect of such use, the owner of copyright and related rights shall have the right to receive fair compensation consisting of levies on devices and media suitable or intended for copying, payable at the point of first sale in Kenya by the manufacturer or importer of such equipment or media.

(3) The private copying remuneration levy shall be determined through an agreement between the collective management organization, representative body of manufacturers, representative body of importers of audio recording equipment, audio blank tape and media intended for recording, and the Authority.

(4) The Authority shall designate an entity to be responsible for collecting the levies in accordance with this section and such funds shall be held at a trust bank account approved by the Central Bank of Kenya.

(5) The Authority shall determine and publish the appropriate share of the private copying remuneration applicable to the respective rights holders and the Authority.

(6) All owners of copyright and related rights shall be eligible to a share of the proceeds of Private Copying Remuneration.

(7) The Authority shall utilize the proceeds received under subsection (5) to support—

- (a) the establishing of a collective management organization in sector accordance with section 106 (2); or

- (b) Supporting artists in the relevant sector with grants to enable them create and commercialise their works;

PART VII - MORAL RIGHTS

Moral rights of an author and performer

57. (1) Irrespective of the author's economic rights and despite the transfer of such rights, the author shall have the inalienable right to—

- (a) claim the authorship of the work;
- (b) object to any distortion, mutilation or other modification of or other derogatory action in relation to the work that would be detrimental to their honour or reputation; and
- (c) elect to use a pseudonym or remain anonymous.

Requirement that right be asserted.

58. (1) A person does not infringe the right conferred by right to be identified as author or director by doing any of the acts mentioned in that section unless the right has been asserted in accordance with the following provisions so as to bind him in relation to that act.

(2) The right may be asserted generally, or in relation to any specified act or description of acts—

- (a) on an assignment of copyright in the work, by including in the instrument effecting the assignment a statement that the author or director asserts in relation to that work his right to be identified; or
- (b) by instrument in writing signed by the author.

(3) The right may also be asserted in relation to the public exhibition of an artistic work—

- (a) by securing that when the author or other first owner of copyright parts with possession of the original, or of a copy made by him or under his direction or control, the author is identified on the original or copy, or on a frame, mount or other thing to which it is attached; or
- (b) by including in a license by which the author or other first owner of copyright authorises the making of copies of the work a statement signed by or on behalf of the person granting the license that the

author asserts his right to be identified in the event of the public exhibition of a copy made in pursuance of the license.

(4) The persons bound by an assertion of the right under subsection (2) or (3) are—

- (a) in the case of an assertion under subsection (2)(a), the assignee and anyone claiming through him, whether or not he has notice of the assertion;
- (b) in the case of an assertion under subsection (2)(b), anyone to whose notice the assertion is brought;
- (c) in the case of an assertion under subsection (3)(a), anyone into whose hands that original or copy comes, whether or not the identification is still present or visible;
- (d) in the case of an assertion under subsection (3)(b), the licensee and anyone into whose hands a copy made in pursuance of the license comes, whether or not he has notice of the assertion.

Right to object to derogatory treatment of work.

59. (1) The author of a copyright literary, dramatic, musical or artistic work, or a film, has the right in the circumstances mentioned in this section not to have his work subjected to derogatory treatment.

(2) For the purposes of this section—

- (a) “treatment” of a work means any addition to, deletion from or alteration to or adaptation of the work, other than—
 - (i) a translation of a literary or dramatic work; or
 - (ii) an arrangement or transcription of a musical work involving no more than a change of key or register;
- (b) the treatment of a work is derogatory if it amounts to distortion or mutilation of the work or is otherwise prejudicial to the honour or reputation of the author or director; and
- (c) in the following provisions of this section references to a derogatory treatment of a work shall be construed accordingly.

(3) In the case of a literary, dramatic or musical work the right is infringed by a person who—

- (a) publishes commercially, performs in public or communicates to the public a derogatory treatment of the work; or
- (b) issues to the public copies of a film or sound recording of, or including, a derogatory treatment of the work.

(4) In the case of an artistic work the right is infringed by a person who—

- (a) publishes commercially or exhibits in public a derogatory treatment of the work, or communicates to the public a visual image of a derogatory treatment of the work;
- (b) shows in public a film including a visual image of a derogatory treatment of the work or issues to the public copies of such a film, or
- (c) in the case of—
 - (i) a work of architecture in the form of a model for a building;
 - (ii) a sculpture, or
 - (iii) a work of artistic craftsmanship, issues to the public copies of a graphic work representing, or of a photograph of, a derogatory treatment of the work.

(5) Subsection (4) does not apply to a work of architecture in the form of a building; but where the author of such a work is identified on the building and it is the subject of derogatory treatment, he has the right to require the identification to be removed.

(6) In the case of a film, the right is infringed by a person who—

- (a) shows in public or communicates to the public a derogatory treatment of the film; or
- (b) issues to the public copies of a derogatory treatment of the film.

(7) The right conferred by this section extends to the treatment of parts of a work resulting from a previous treatment by a person other than the author,

if those parts are attributed to, or are likely to be regarded as the work of, the author or director.

Consent and
waiver of
rights.

60. (1) It is not an infringement of any of the rights conferred by this Chapter to do any act to which the person entitled to the right has consented.

(2) Any of those rights may be waived by instrument in writing signed by the person giving up the right.

(3) A waiver—

(a) may relate to a specific work, to works of a specified description or to works generally, and may relate to existing or future works, and

(b) may be conditional or unconditional and may be expressed to be subject to revocation; and

(c) if made in favour of the owner or prospective owner of the copyright in the work or works to which it relates, it shall be presumed to extend to his licensees and successors in title unless a contrary intention is expressed.

(4) Nothing in this Chapter shall be construed as excluding the operation of the general law of contract or estoppel in relation to an informal waiver or other transaction in relation to any of the rights mentioned in subsection (1).

Application of
provisions to
joint works.

61. (1) The right to be identified as author or director is, in the case of a work of joint authorship, a right of each joint author to be identified as a joint author and must be asserted by each joint author in relation to himself.

(2) The right conferred by (right to object to derogatory treatment of work) is, in the case of a work of joint authorship, a right of each joint author and his right is satisfied if he consents to the treatment in question.

(3) A waiver under of those rights by one joint author does not affect the rights of the other joint authors.

(4) The above provisions also apply (with any necessary adaptations) in relation to a film which was, or is alleged to have been, jointly directed, as they apply to a work which is, or is alleged to be, a work of joint authorship.

Moral rights
not assignable.

62. The moral rights conferred by this part are not assignable.

Transmission
of moral rights
on death.

63. (1) On the death of a person entitled to the right conferred by right to identification of author or director), right to object to derogatory treatment of work or right to privacy of certain photographs and films—

(a) the right passes to such person as he may by testamentary disposition specifically direct,

(b) if there is no such direction but the copyright in the work in question forms part of his estate, the right passes to the person to whom the copyright passes, and

(c) if or to the extent that the right does not pass under paragraph (a) or (b) it is exercisable by his personal representatives.

(2) Where copyright forming part of a person's estate passes in part to one person and in part to another, as for example where a bequest is limited so as to apply—

(a) to one or more, but not all, of the things the copyright owner has the exclusive right to do or authorize; or

(b) to part, but not the whole, of the period for which the copyright is to subsist, any right which passes with the copyright by virtue of subsection (1) is correspondingly divided.

(3) Whereby virtue of subsection (1)(a) or (b) a right becomes exercisable by more than one person—

(a) it may, in the case of the right conferred by the right to identification of author), be asserted by any of them;

(b) it is, in the case of the right to object to derogatory treatment of work a right exercisable by each of them and is satisfied in relation to any of them if he consents to the treatment or act in question; and

(c) any waiver of the right in accordance with **Section 87** by one of them does not affect the rights of the others.

(4) A consent or waiver previously given or made binds any person to whom a right pass by virtue of subsection (1).

(5) Any damages recovered by personal representatives by virtue of this section in respect of an infringement after a person's death shall devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death.

PART VII - DEALING WITH RIGHTS IN COPYRIGHT WORKS

Artist's right
of resale

64. (1) Regardless of any assignment of the original work, authors of an original work of art shall retain the right to a share of the proceeds from any subsequent sale through a public auction or dealer, at a rate determined by the Cabinet Secretary.

(2) The artist's resale right shall remain valid for the duration of the copyright in the original work of art.

(3) The artist's resale right is inalienable and shall not be waived under any circumstances.

(4) Visual artists may establish a collective management organization to administer the right under this section.

(5) In the absence of a registered collective management organization under subsection (4), the Cabinet Secretary shall designate any registered collective management organization for the purpose.

(6) The resale royalty payable shall be at the rate of five percent of the net sale price on the commercial resale of an artwork, with the seller, the art market professional, the seller's agent and the buyer being jointly and severally liable for the payment.

(7) If an artwork bears a mark or name purporting to identify a person as the artist, it shall be presumed, in the absence of contrary evidence, that the person is the artist.

(8) No resale royalty shall be payable on commercial resale of an artwork if—

- (a) the sale price is less than twenty thousand shillings;
- (b) it concerns the resale of a building, or a drawing, plan or model of a building;
- (c) it is an auction for charitable purposes;
- (d) the works of fine art produced are of identical copies; or
- (e) it involves a manuscript of a literary, dramatic or musical work.

(9) For the purpose of this section, the term works of art and visual art shall be construed widely.

(10) Any dispute regarding the entitlement, collection, or distribution of resale royalties shall be referred to a dispute resolution mechanism established by the Authority.

Assignment
and licenses.

65. (1) Subject to this section, copyright may be transferable by assignment, license, testamentary disposition, or by operation of law as personal or movable property.

(2) An assignment, license or testamentary disposition of copyright may be limited so as to apply only to some of the acts which the owner of the copyright has the exclusive right to control, or to a part only of the period of the copyright, or to a specified country or other geographical area.

(3) An assignment of copyright or an exclusive license to perform an act controlled by copyright must be in writing and signed by or on behalf of the assignor or licensor.

(4) A non-exclusive license to do an act the doing of which is controlled by copyright may be written or oral, or may be inferred from conduct and such a license may be revoked at any time, unless granted by contract.

(5) An assignment, license, or testamentary disposition may be effectively granted or made in respect of a future work, or an existing work in which copyright does not yet subsist and prospective copyright in any such work shall be transferable by operation of law as movable property.

Terms of
Licensing.

66. (1) Where an agreement for the license of copyright does not specify the period of license, the license shall terminate after three years.

(2) In the case of agreements regarding future works which are not specified in detail, either party may, on giving not less than one month's notice, terminate the agreement not earlier than three years after it was signed or such shorter period as may be agreed.

(3) A license granted in respect of any copyright by the person who, in relation to the matters to which the license relates, is the owner of the copyright, shall be binding upon every successor in title to their interest in the copyright, except a purchaser in good faith and without notice, actual or constructive, of the license, or a person deriving title from such purchaser.

(4) Where the doing of anything is authorised by the grantee of a license or a person deriving title from the grantee, and it is within the terms, including any implied terms of the license for them to authorise it, it shall for the purpose of this Act be deemed to be done with the license of the grantor and of every person, if any, upon whom the license is binding.

Rights and
remedies of
exclusive
licensee and
sub-licensee

67. (1) An exclusive licensee and an exclusive sub-licensee shall have concurrent rights of action and remedies as the owner of the copyright, as though the license or sub-license were an assignment, in respect to the rights granted under the license or sub-license.

(2) Prior to instituting any proceedings under subsection (1), an exclusive licensee or sub-licensee must:

(a) provide written notice to the owner of the copyright of their intention to institute proceedings; and

(b) allow the owner of the copyright the option to join the proceedings at their own expense.

(3) In the event the owner of the copyright joins the proceedings as per subsection (2)(b), they shall be entitled to:

- (a) recover any damages they may have suffered due to the infringement; or
- (b) claim a reasonable royalty to which they may be entitled.

Reversion of
rights by
exclusive
licensor

68. (1) If a licensee fails to exercise an exclusive right granted by the copyright owner, and such non-exercise is detrimental to the legitimate interests of the copyright owner, the copyright owner may revoke the granted right.

(2) The right of revocation may only be exercised—

(a) after the expiration of the delay stipulated in the contract for the commencement of the exercise of the granted right,

(b) not earlier than two years after the conferral of the same,
or

(c) if the work to be used was delivered subsequently, from the date of its delivery.

(3) In each case, the copyright owner must notify the licensee of the proposed revocation and grant a reasonable additional period suitable for adequate exercise of the transferred right, unless the exercise of the right by the licensee has become impossible or the licensee has refused it.

(4) The right of revocation may not be waived in advance.

Reversion of
rights in the
case of
insolvency

69. (1) In the event that a licensee becomes insolvent, is declared bankrupt, or is placed under receivership, the license shall be deemed terminated by operation of law.

(2) In such cases, the licensor or copyright owner shall have the right to retrieve control and further distribution of the copyrighted material previously licensed.

(3) In the event that the copyrighted material or any derived products are part of the assets to be liquidated, the copyright owner shall be entitled to claim proceeds proportional to the rights involved, pursuant to the priorities established under insolvency law.

Ring back
tunes.

70. (1) Revenue generated from the sale of ring back tunes, net of taxes, shall be distributed among the relevant parties as follows—

(a) Content service provider at eight and a half percent (8.5%);

(b) telecommunication operator at thirty-nine and half percent (39.5%);

(c) artiste or owner of the copyright shall receive fifty two percent (52%).

(2) Despite subsection (1), all contracts between Content service providers and artistes or owners of the copyright existing before the commencement of this Act shall apply until their expiry.

(3) A telecommunication operator shall be responsible for direct remittance of the allocated net revenue from ring back tune sales to the artist or copyright owner, in accordance with the distribution outlined in subsection (1).

PART VIII – INFRINGEMENT OF COPYRIGHT OR RELATED RIGHTS

Acts restricted
by copyright
in a work.

71. (1) Copyright or related rights shall be infringed by a person who, without the license of the owner of the copyright or related rights:

(a) does, or causes to be done, an act the doing of which is controlled by the copyright or related rights owner; or

(b) imports, or causes to be imported, otherwise than for his private and domestic use, an article which he knows to be an infringing copy.

(2) References in this Part to the doing of an act restricted by the copyright in a work are to the doing of it—

(a) in relation to the work as a whole or any substantial part of it, and

(b) either directly or indirectly;

(3) This Chapter has effect subject to the provisions on (acts permitted in relation to copyright works), and (provisions with respect to copyright licensing).

Infringements
on right of
performers.

72. (1) The rights of a performer shall be infringed by a person who without the consent of the performer:

(a) does, or causes to be done, any act specified in section 71; or

(b) imports or causes to be imported, otherwise than for his own private or domestic use, an article which he knows would have been made contrary to Section 38 had it been made in Kenya by the importer.

(2) The rights of a producer of sound recordings shall be infringed by a person who without the consent of the producer:

(a) does or causes to be done, any act specified in section 71; or

(b) imports or causes to be imported, otherwise than for his private use, an article which he knows would have been made contrary to section 37(1) had it been made in Kenya by the importer

Infringement
of copyright
by copying.

73. (1) The copying of the work is an act restricted by the copyright in every description of copyright work; and references in this Part to copying and copies shall be construed as follows.

(2) Copying in relation to a literary, dramatic, musical or artistic work means reproducing the work in any material form.

This includes storing the work in any medium by electronic means.

(3) In relation to an artistic work copying includes the making of a copy in three dimensions of a two-dimensional work and the making of a copy in two dimensions of a three-dimensional work.

(4) Copying in relation to a film or broadcast includes making a photograph of the whole or any substantial part of any image forming part of the film or broadcast.

(5) Copying in relation to the typographical arrangement of a published edition means making a facsimile copy of the arrangement.

(6) Copying in relation to any description of work includes the making of copies which are transient or are incidental to some other use of the work.

Infringement
by rental or
lending of
work to the
public.

74. (1) The rental or lending of copies of the work to the public is an act restricted by the copyright in—

(a) a literary, dramatic or musical work;

(b) an artistic work, other than—

(i) a work of architecture in the form of a building or a model for a building, or

(ii) a work of applied art, or

(c) a film or a sound recording.

(3) The expressions “rental” and “lending” do not include—

(a) making available for the purpose of public performance, playing or showing in public or communication to the public;

(b) making available for the purpose of exhibition in public;

or

(c) making available for on-the-spot reference use.

(4) Where lending by an establishment accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the operating costs of the establishment, there is no direct or indirect economic or commercial advantage for the purposes of this section.

Infringement
by
performance,
showing or
playing of
work in
public.

75. (1) The performance of the work in public is an act restricted by the copyright in a literary, dramatic or musical work.

(2) In this Part “performance”, in relation to a work—

(a) includes delivery in the case of lectures, addresses, speeches and sermons, and

(b) in general, includes any mode of visual or acoustic presentation, including presentation by means of a sound recording, film [or broadcast] of the work.

(3) The playing or showing of the work in public is an act restricted by the copyright in a sound recording, film or broadcast.

(4) Where copyright in a work is infringed by its being performed, played or shown in public by means of apparatus for receiving visual images or sounds conveyed by electronic means, the person by whom the visual images or sounds are sent, and in the case of a performance the performers, shall not be regarded as responsible for the infringement.

Infringement
by
communication
to the public

76. (1) The communication to the public of the work is an act restricted by the copyright in—

(a) a literary, dramatic, musical or artistic work,

(b) a sound recording or film, or

(c) a broadcast.

(2) References in this Part to communication to the public are to communication to the public by electronic transmission, and in relation to a work include—

(a) the broadcasting of the work;

(b) the making available to the public of the work by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.

Infringement by making adaptation or act done in relation to adaptation.

77. (1) The making of an adaptation of the work is an act restricted by the copyright in a literary, dramatic or musical work.

(2) For this purpose, an adaptation is made when it is recorded, in writing or otherwise.

(3) The doing of any of the acts specified in sections 17 to 20, or subsection (1) above, in relation to an adaptation of the work is also an act restricted by the copyright in a literary, dramatic or musical work.

(4) For this purpose, it is immaterial whether the adaptation has been recorded, in writing or otherwise, at the time the act is done.

Secondary infringement of copyright

78. (1) The copyright in a work is infringed by a person who, without the license of the copyright owner—

(a) possesses in the course of a business,

(b) sells or lets for hire, or offers or exposes for sale or hire,

(c) in the course of a business exhibits in public or distributes, or

(d) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright, an article which is, and which he knows or has reason to believe is, an infringing copy of the work;

(e) imports into Kenya, otherwise than for his private and domestic use, an article which is, and which he knows or has reason to believe is, an infringing copy of the work.

(2) Copyright in a work is infringed by a person who without the license of the copyright owner transmits the work by means of a telecommunications system (otherwise than by communication to the public), knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in the Kenya or elsewhere.

(3) Where the copyright in a literary, dramatic or musical work is infringed by a performance at a place of public entertainment, any person

who gave permission for that place to be used for the performance is also liable for the infringement unless when he gave permission, he believed on reasonable grounds that the performance would not infringe copyright.

(4) In this section “place of public entertainment” includes premises which are occupied mainly for other purposes but are from time to time made available for hire for the purposes of public entertainment.

Secondary
infringement:
provision of
apparatus for
infringing
performance,

79. (1) Where copyright in a work is infringed by a public performance of the work, or by the playing or showing of the work in public, by means of apparatus for—

- (a) playing sound recordings,
 - (b) showing films, or
 - (c) receiving visual images or sounds conveyed by electronic means,
- the following persons are also liable for the infringement.

(2) A person who supplied the apparatus, or any substantial part of it, is liable for the infringement if when he supplied the apparatus or part—

- (a) he knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright, or
- (b) in the case of apparatus whose normal use involves a public performance, playing or showing, he did not believe on reasonable grounds that it would not be so used as to infringe copyright.

(3) An occupier of premises who gave permission for the apparatus to be brought onto the premises is liable for the infringement if when he gave permission he knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright.

(4) A person who supplied a copy of a sound recording or film used to infringe copyright is liable for the infringement if when he supplied it he knew or had reason to believe that what he supplied, or a copy made directly or indirectly from it, was likely to be so used as to infringe copyright

Presumptions
and
Limitations in
Infringement
Actions

80. (1) Copyright is presumed to subsist in the work if not contested.

(2) If the subsistence of copyright is presumed, the plaintiff is presumed to be the owner.

(3) If an author's name appears on copies of a work, that person is presumed to be the author.

(4) In the case of anonymous or pseudonymous works, the publisher is presumed to represent the author unless the author's identity is revealed or evident.

(5) Posthumous works are presumed eligible for copyright.

(6) Labels or marks stating the maker or first publisher of sound recordings are presumed to be true.

(7) If infringement is committed unknowingly, the plaintiff is entitled only to statutory damages.

(8) The court may award additional damages in cases of flagrant infringement.

Relief and
Remedies for
Infringement

81. (1) Infringement of any right protected under this Act shall be actionable at the suit of the owner of the right.

(2) The following reliefs shall be available to the plaintiff—

(a) the relief by way of damages (including statutory damages), injunction, accounts or otherwise that is available in any corresponding proceedings in respect of infringement of other proprietary rights;

(b) delivery up to the plaintiff of any article in the possession of the defendant which appears to the court to be an infringing copy, or

any article used or intended to be used for making infringing copies;

- (c) in lieu of damages, the plaintiff at his option, be awarded an amount calculated on the basis of reasonable royalty which would have been payable by a licensee in respect of the work or type of work concerned;
- (d) in lieu of damages, the plaintiff at his option, be awarded statutory damages;
- (e) for the purpose of determining the amount of damages or a reasonable royalty to be awarded under this section, the court may direct an enquiry to be held and may prescribe such procedures for conducting such enquiries as the court considers necessary; and
- (f) before the owner of the right institutes proceedings under this section, he shall give notice in writing to the exclusive licensee or sublicensee of the copyright concerned of the intention to do so, and the exclusive licensee or sub-licensee may intervene in such proceedings and recover any damages he may have suffered as a result of the infringement concerned or a reasonable royalty to which he may be entitled.

Removal or
Alteration of
Technological
Protection
measures

82. (1) The following acts shall be considered unlawful, and an infringement of the exclusive rights accorded to owners of works under this Act:

- (a) the removal or alteration of any electronic rights management information from a copy of a protected work or other protected subject matter without authority; and
- (b) the distribution or import for distribution to the public, broadcasting, or other communication to the public, or public performance of protected works or other protected subject matter, by a person knowing or having reason to know that electronic rights management information has been removed or altered without authority of the right owner.

Penalty
against
technological
protection
measures

83. (1) Where an effective technological measure is used by, or with the consent of, an owner of copyright or any related, it shall be considered unlawful and an infringement of such rights-

(a) to manufacture, import for distribution to the public, distribute or offer to the public for sale or possess for commercial purposes any device, product, component or means that-

(i) is promoted, advertised or marketed for the purpose of circumventing any device or means intended to prevent or restrict reproduction, communication or performance of a work, an expression of folklore, a performance, a sound recording, a broadcast or a typographical arrangement, or to impair the quality of copies made of any such work or subject matter;

(ii) has only a limited commercially significant purpose other than that mentioned in subparagraph (i); or

(iii) is primarily designed, produced or adapted to circumvent the device as mentioned in subparagraph (i) or susceptible to enable or assist the reception of an encrypted programme which is broadcast or otherwise communicated to the public, by those who are not entitled to receive the programme;

(b) to offer to the public or provide services which have any such effect as set out in paragraph (a); or

(c) to circumvent any such technological measure for the purpose of committing an act which according to this Act is subject to the consent of the owner of the right, except if the circumvention is made for the sole purpose of achieving interoperability of a computer programme with another independently created computer programme, by a person having lawful access to the computer programme, or on his behalf by a person authorized to do so, but then only to the extent of facilitating interoperability;

(i) identifying and analysing the specific elements of the computer programme that are not readily available to the person

carrying out the circumvention, and that are necessary to achieve such interoperability;

(ii) developing and employing technological means necessary to carry out the activities specified in subparagraph (i); or

(iii) making the information resulting from the activities in subparagraph (i), or the means specified in subparagraph (ii) available to others for the sole purpose of enabling interoperability as described in this subsection.

PART IX- LIABILITY FOR ONLINE INTERMEDIARIES

Protection of
online
intermediaries

84. (1) For the purposes of this Part, an 'online intermediary' includes Internet Service Providers, social media platforms, online marketplaces, search engines, video sharing platforms, and any other online platform that hosts copyright works and any other online platforms facilitating the hosting, transmitting, or caching of copyright works.

(2) An online intermediary will not be held liable for copyright infringement when providing access to, transmitting, routing, or storing content in the ordinary course of its business, provided it—

- (a) does not initiate the transmission;
- (b) does not select the recipients of the material;
- (c) carries out these actions automatically, without choosing or altering the content;
- (d) does not modify the transmitted material;
- (e) does not promote the content being transmitted; or
- (f) carries out an action in compliance with an order of the Authority.

(3) The exemption under subsection (2) includes the automatic, intermediate, and transient storage of content meant for onward transmission.

(4) An online intermediary will not be held liable for copyright infringement when Storing content temporarily to enhance onward transmission to other service users, provided it—

- (a) does not modify the material;
- (b) adheres to access conditions for the material;
- (c) complies with cache updating rules, aligning with accepted industry standards;
- (d) does not disrupt lawful use of technology for gathering data on material use;
- (e) removes or restricts access once a takedown notice is received, or when ordered by the Authority or after becoming aware of the unlawful nature of the cached material.

(5) An online intermediary will not be liable for incurring damages arising from storing material at the service recipient's request, provided it:

- (a) lacks actual knowledge of the content or associated activity infringing third-party rights;
- (b) is not aware of facts or circumstances making the infringing nature of the material apparent;
- (c) upon receiving a takedown notice, removes or disables access to the allegedly infringing content as specified under section 85 within 48 hours.

(6) This exemption does not apply if the service recipient is operating under the authority or control of the online intermediary.

(7) An online intermediary will not be liable for referring or linking users to a webpage containing infringing material or facilitating infringing activity, using information location tools such as directories, indexes, references, pointers, or hyperlinks, provided it--

- (a) lacks actual knowledge of the material infringing any person's rights;

- (b) is not aware of facts or circumstances that make the infringing nature of the material apparent.

Takedown
Notice

85. (1) A person whose rights have been infringed by content to which access is being offered by an online intermediary may request, by way of a takedown notice, that online intermediary removes the infringing content.

(2) A takedown notice issued under subsection (1) shall—

- (a) be in writing and addressed by the complainant or their agent to the online intermediary or their designated agent;
- (b) contain the full names, telephone, physical and email address of the complainant;
- (c) be signed by the complainant or their authorized agent;
- (d) describe in specific detail the copyright work subject to the alleged infringement or sought to be removed;
- (e) identify the rights being infringed;
- (f) set out the content sought to be removed with details of where the content is contained;
- (g) attest to claim of ownership, validity of the rights, good faith and setting out any efforts to have entities responsible for making the content available to remove the content;
- (h) be copied to the Authority and the Communication Authority of Kenya.

(3) A takedown notice shall be deemed delivered on the next business day following physical delivery at its registered offices or forty-eight hours following the day it is sent by registered post or immediately it is sent by electronic communication to a designated address of the online intermediary or its designated agent.

(4) An online intermediary shall, upon receipt of a valid takedown notice, notify the person responsible for making available the alleged infringing content and provide them with a copy of the notice.

Counter notice

86. (1) An online intermediary shall disable access to the material within Forty-Eight hours unless it receives a counter notice.

(2) The counter notice must respond to the claims contained in a takedown notice and contain information disputing the contents of the takedown notice.

(3) The counter notice shall meet the formal conditions set out for a takedown notice.

(4) Where the counter notice is issued, the party that issued the takedown notice shall be required to file a complaint with the Authority.

(5) Upon receipt of the complaint under subsection (3), the Authority shall determine the matter of the claim within seven days and may issue interim orders including blocking orders as may be necessary. (5) An online intermediary which fails to take down or disable access when it receives a takedown notice shall be fully liable for any loss or damages resulting from non-compliance to a takedown notice without a valid justification.

(6) Where an online intermediary which fails to take down or disable access, the Communications Authority shall takedown and disable access to infringing content as per the takedown notice.

Liability for
Failure to
Comply

87. (1) Any person who falsely lodges a takedown notice commits an offence and shall, upon conviction, be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding five years, or to both.

(2) A person responsible for misrepresentation under a takedown notice shall, in addition to the penalty provided under this section, be liable for any damages resulting from such false misrepresentation.

(3) An online intermediary shall not be liable for wrongful takedown in response to a valid takedown notice.

Role of Online
intermediary

88. (1) An online intermediary may be required to—

(a) provide, on orders of the Authority upon application by the copyright owner whose rights have been subject to a takedown notice, information regarding the identity of their service subscribers suspected of content infringement to investigative agencies;

(b) designate an agent or an address (either electronic or physical) for receiving takedown notices, a detail to be clearly stated under its terms and conditions of service.

(2) In cases where the online intermediary has designated an agent according to subsection (1)(b), the provider shall:

(a) make the following information publicly accessible through its services, including its website, and provide this information to the Authority:

(i) name, address, phone number, and electronic mail address of the agent;

(ii) other contact information the Authority may deem appropriate;

(b) ensure that it maintains a current directory of agents available for public inspection, including through its website.

(3) Despite subsection (1), the online intermediary has no general obligation to--

(a) monitor the material it transmits, stores, or links via its services;

(b) actively seek facts or circumstances indicative of infringing activity within its services.

PART X –REMEDIES FOR INFRINGEMENT

89. (1) An infringement of copyright is actionable by the copyright owner.

(2) In proceedings relating to copyright infringement, the plaintiff shall be entitled to all remedies, including damages, injunctions, accounts of profits, or any other relief, consistent with those available for the infringement of other types of property rights.

Infringement
actionable by
copyright
owner.

Provisions as to damages in infringement action.

90. (1) In an action for copyright infringement, if it can be demonstrated that the defendant was unaware, and had no reasonable grounds to suspect, that copyright existed in the related work at the time of the infringement, the plaintiff is not entitled to damages against the defendant, but this does not prejudice the pursuit of other remedies.

(2) The court, in a copyright infringement case, may consider all the circumstances, specifically—

- (a) the flagrant nature of the infringement; and
- (b) any benefits the defendant gained due to the infringement, and may award additional damages as deemed necessary for justice in the case

Injunctions against Online Intermediaries

91. (1) A person may apply to the High Court for the grant of interim relief where the person has reasonable grounds to believe that their copyright is being or may be infringed by a person situated in or outside Kenya.

(2) The High Court may, upon application under subsection (1), grant an order requiring—

- (a) a person enabling or facilitating the infringement of copyright, or whose service is used by another person to infringe copyright, to cease such enabling or facilitating activity or disable that person's access to its service for the infringing purpose;
- (b) a person hosting or making available an online location, service or facility situated in or outside Kenya which is used to infringe copyright, or which enables or circumvents or facilitates the infringement of copyright, to disable access to such online location, service or facility as replaced, amended, or moved from time to time; or
- (c) a service provider to prevent or impede the use of its service to access an online location, service or facility situated in or outside the Republic of Kenya that is used to infringe copyright as replaced, amended or moved from time to time.

Statutory
Damages

92. (1) This section applies where a claimant in an infringement action elects for statutory damages.

(2) The range of amount of statutory damages shall be determined as follows—

- (a) not less than shillings two hundred thousand (KES 200,000) and not more than shillings One million (KES 1,000,000) for each work or performance that is the subject of the action;
- (b) Not less than 800,000/- and not more than 1,500,000/- for all the works that are the subject of the action; and
- (c) Not less than 800,000/- and not more 1,500,000/- for all the performances that are the subject of the action.

(3) Subsection (2)(b) and (c) will not apply if the claimant provides evidence that their actual loss for all the works or performances involved in the action surpasses 1,500,000.

(4) If separate and independent works or protected performance recordings are assembled into a singular entity, they shall be treated as one work for the purposes of subsection (2).

(5) In determining the amount of statutory damages to award, the Court shall consider all relevant factors, including —

- (a) the nature and purpose of the act constituting the rights infringement, including whether the act is of a commercial nature or otherwise;
- (b) the flagrancy of the infringement;
- (c) whether the defendant acted in bad faith;
- (d) any loss that the claimant has suffered or is likely to suffer because of the infringement;
- (e) any benefit gained by the defendant because of the infringement;
- (f) the conduct of the parties before and during the proceedings; and

- (g) the need to deter similar infringements.

Grant of *Anton Piller* order

93. (1) If a person has provided initial evidence that their rights have been infringed by another person and demonstrates to the satisfaction of the court or Copyright Tribunal that—

- (a) they have a valid cause of action against another person, which they intend to pursue;
- (b) the other party is in possession of documents, infringing copies, or other materials, which are of substantial importance as evidence for the cause of action; and
- (c) there exists a real and substantial risk that these documents, infringing copies, or other materials may be concealed, destroyed, or rendered inaccessible before their discovery through conventional methods.

(2) On such demonstration, the court or Copyright Tribunal may issue any order it deems necessary or appropriate to ensure the preservation of the documents, copies, or materials as evidence.

(3) An order made under subsection (1) may be granted *ex parte*.

Exclusive Licensee Rights and Remedies.

94. (1) An exclusive licensee, apart from against the copyright owner, possesses the same rights and remedies concerning for matters post-license issuance as if the license were an assignment.

(2) The rights and remedies of the exclusive licensee coincide with those of the copyright owner, and hence, all relevant provisions in this Part relating to the copyright owner shall apply to the licensee.

(3) In an action initiated by an exclusive licensee under this section, a defendant may use any defense that would have been accessible if the lawsuit had been brought by the copyright owner.

Actionable infringements by a non-exclusive licensee

95. (1) A non-exclusive licensee may bring an action for infringement of copyright if—

- (a) the infringement is directly associated with a previously licensed act of the licensee; and
- (b) the license:
 - (i) is written and signed by or on behalf of the copyright owner; and
 - (ii) explicitly grants the non-exclusive licensee the right to take action under this section.

(2) In a lawsuit filed under this section, the non-exclusive licensee is entitled to the same rights and remedies that the copyright owner would have had if the action had been initiated by them.

(3) The rights granted under this section are concurrent with those of the copyright owner, and all related provisions in this Part referring to the copyright owner are interpreted accordingly.

(4) In a lawsuit initiated by a non-exclusive licensee under this section, a defendant may employ any defense that would have been available if the lawsuit had been initiated by the copyright owner.

(5) Subsections (1) to (4) apply to a non-exclusive licensee who has a right to take action under this section, just as it applies to an exclusive licensee.

(6) In this section, a "non-exclusive licensee" refers to a license holder who is authorized to exercise a right that the copyright owner can still exercise.

Exercise of
concurrent
rights.

96. (1) If a copyright infringement lawsuit filed by the copyright owner or an exclusive licensee pertains (entirely or partially) to an infringement for which they have concurrent rights, the copyright owner or exclusive licensee may not proceed with the action without the court's permission, unless the other party is either joined as a co-plaintiff or added as a defendant.

(2) A copyright owner or exclusive licensee who is added as a defendant under subsection (1) is not responsible for any legal costs in the action unless they participate in the proceedings.

(3) This section does not impede the granting of interlocutory relief on an application made by a copyright owner or exclusive licensee alone.

(4) Where an action for infringement of copyright is brought which relates (wholly or partly) to an infringement in respect of which the copyright owner and an exclusive licensee have or had concurrent rights of action—

- (a) In assessing damages, take into account—
 - (i) the terms of the license agreement; and
 - (ii) any pecuniary remedy already awarded or available to either of them with respect to the infringement;
- (b) refrain from directing an account of profits if an award of damages has been made, or an account of profits has been directed, in favour of the other party with respect to the infringement;
- (c) In the case where an account of profits is directed, apportion the profits between them as it sees fit, subject to any existing agreement between them.

(4) These provisions shall apply whether or not the copyright owner and the exclusive licensee are both parties to the action.

(5) The copyright owner is required to notify any exclusive licensee possessing concurrent rights prior to applying for an order for delivery up or exercising the right of seizure.

(6) The court may, on the licensee's application, issue an order taking into consideration the terms of the license agreement.

Remedies for
infringement
of moral
rights.

97. (1) An infringement of a right conferred by moral rights is actionable as a breach of statutory duty owed to the person entitled to the right.

(2) In proceedings for infringement of the right to object to derogatory treatment of work the court may, if it deems it is an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made, in such terms and in such manner as may be approved by the court, dissociating the author or director from the treatment of the work.

Offences and penalties for infringement

98. (1) A person commits an offence, if at a time when copyright or the right of a performer or producer subsists in a work, the person knowingly—

- (a) makes for sale or rent an infringing copy;
- (b) sells or lets for hire or, by way of trade, exposes or offers for sale an infringing copy;
- (c) distributes infringing copies;
- (d) possesses otherwise than for his private and domestic use, an infringing copy;
- (e) imports into Kenya otherwise than for his or her private and domestic use an infringing copy;
- (f) makes or has in his or her possession a contrivance used or intended to be used for the purpose of making an infringing copy;
- (g) causes a broadcast to be rebroadcast or transmitted in a diffusion service, knowing that copyright subsists in the broadcast and that such rebroadcast or transmission constitutes an infringement of the copyright;
- (h) causes a program carrying signals to be distributed by a distributor for whom they were not intended, knowing that copyright subsists in the signals and that such distribution constitutes an infringement of the copyright;
- (i) circumvents a technological protection measure or manufactures or distributes devices designed for circumventing technological protection measures; or
- (j) removes or alters rights management information or imports or distributes, or makes available to the public a copy of a work from which electronic rights management information has been removed or altered.

(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.

(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.

(4) A person convicted of an offence under subsection (1) (a), (b), (c), (d) or (e) shall be liable to—

(a) for a first conviction, a fine of five times the market value of the legitimate work or one thousand shillings for each infringing copy whichever is higher or to imprisonment for a term not exceeding ten years, or to both; and

(b) for subsequent convictions, a fine of ten times the market value of the legitimate work or two thousand shillings for each infringing copy, whichever is higher or imprisonment for a term not exceeding twenty years, or to both.

(5) A person convicted of an offence under subsection (1) (f), (g), (h), (i) or (j) shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or to both.

(6) A person convicted 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.

(7) The court shall order the destruction or delivery of any article in a person's possession that appears to be an infringing copy or an article used for making infringing copies, regardless of conviction.

(8) Half of all fines imposed and collected shall be paid into the revenues of the Board, with the remaining half being paid into the general revenues of Kenya.

(9) Any complaint alleging a breach of this section may be lodged by a licensed collective management organization where such rights are managed collectively.

Offence by
body corporate

99. (1) Where a body corporate is convicted of an offence under this Act, every person who at the time the offence was committed was in charge of or was responsible to the body corporate for the conduct of its business and affairs is also deemed to have committed the offence and shall be liable to prosecution.

(2) Where it is proven that a body corporate committed an offence under this Act with the consent, connivance or willful lack of due diligence by a person in charge of or responsible to the body corporate for the conduct of its business and affairs, the person shall be guilty of the offence.

(3) For the purposes of this section—

(a) "body corporate" includes a firm or other association of persons; and

(b) "director" in relation to a firm includes the partner in the firm.

PART XI– ENFORCEMENT MECHANISMS

Inspectors

100. (1) The Authority shall, for the purposes of enforcing the provisions of this Act, appoint such number of inspectors as the Board considers appropriate.

(2) In addition to inspectors appointed under subsection (1), any staff of Customs department or a police officer may perform the functions of an inspector under this Act.

(3) A person appointed as an inspector shall hold office subject to such conditions as the Board may determine with approval of the Cabinet Secretary.

Entry into
premises

101. An inspector may, at any reasonable time and on production of suitable identification, enter any premises, ship, aircraft or vehicle for the

purpose of ascertaining whether there is or has been any contravention of this Act.

Mode of inspection

102. (1) For the purpose of ascertaining whether there is or has been a contravention of this Act, an inspector may inspect—

- (a) any substance or article appearing to be a work;
- (b) any container or package used or intended to be used to contain any work; or
- (c) any plant or equipment appearing to him to be used or intended to be used in connection with the production, reproduction or otherwise manufacture of a work.

(2) An inspector may seize and detain any substance or article which they have reasonable cause to believe to be an infringing copy of any work or in relation to which or by means of which they have reasonable cause to believe that—

- (a) an offence under this Act has been or is being committed; and
- (b) any document which may be required in proceedings under this Act.

(3) Where an inspector seizes any work, they shall in writing, notify the person from whom it is seized the fact of that seizure and shall in that notification specify any item seized.

(4) Any person who—

- (a) willfully obstructs an inspector in the discharge of the inspector's duties; or
 - (b) willfully fails to comply with any requirement properly made to him by an inspector,
- shall be guilty of an offence and shall be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months or to both.

Authority to
arrest.

103. (1) A police officer may arrest, without a warrant, any person suspected, upon reasonable grounds, of having committed an offence under this Act.

(2) Any officer of the Authority who at the time has valid identification and authorized, may arrest, without warrant, any person, who, in their presence, commits any such offence, and may detain such person until that person can be delivered into the custody of a police officer.

(3) A person shall not be arrested or detained without warrant unless reasonable grounds exist for believing that, except by such arrest, the person may not be found or made answerable to justice without unreasonable delay, trouble or expense.

(4) A police officer who is notified of an offence suspected to have been committed under subsection (1) may, upon obtaining a warrant of arrest, effect an arrest and may thereupon confiscate any offending material.

Conduct of
prosecution.

104. (1) The Director of Public Prosecutions may, pursuant to the provisions of the Criminal Procedure Code (Cap. 75), appoint public prosecutors for the purposes of cases arising under this Act.

(2) The Authority shall, for the purposes of section 171(4) of the Criminal Procedure Code (Cap. 75), be deemed to be a public authority.

Measures at
the Border

105. (1) A rights owner or licensee, suspects that pirated goods may be imported, may in writing request with the Commissioner of Customs to suspend the release into free circulation of such goods.

(2) Any rights owner or licensee makes the request shall provide adequate evidence to satisfy the Commissioner of Customs that—

- (a) the copyright has likely been infringed;
- (b) they have ownership or license; and
- (c) they can describe the goods in sufficient detail to make them easily recognizable.

(3) The suspension shall, unless revoked by the complainant, be in place for a reasonable time required for sampling, verification, and inspection of the goods.

(4) The suspension shall remain valid unless the goods are determined to be non-infringing on inspection in the presence of the complainant.

(5) Despite this section, a customs officer may seize goods that the officer reasonably suspects to be infringing and notify any person whom the customs officer considers to be probable right owner and the person importing or exporting the goods.

(6) This section applies, with necessary changes, to goods destined for export.

(7) This provision shall not apply to goods in transit.

PART XII – COLLECTIVE MANAGEMENT OF RIGHTS

Forming a
Collective
Management
Organizations.

106. (1) Rights holders in a creative sector for which rights are collectively managed may form a collective management organization.

(2) The Authority may, where it finds it expedient, assist in establishing a collective management organization for any creative sector.

(3) The Authority shall not license another collective management organization for the same sector if there exists another licensed collective management organization that functions to the satisfaction of its members.

(4) Under this section, creative sector refers to either audiovisual, music, visual art, or book publishing.

Licensing of
Collective
Management
Organizations

107. (1) A person seeking to engage in business of collective management shall apply with the Authority for an operating license.

(2) An application for license as collective management organizations shall be submitted to the Authority in a manner prescribed.

(3) The Authority may approve a collective management organization based on criteria established in the regulations, including the organization's legal status, purpose, and member protection measures.

(4) The license term of a collective management organization shall be a period of three years.

(5) The Authority may revoke the license of a collective management organization if it fails to meet the criteria established in the regulations, which include compliance with its procedures and adherence to this Act.

(6) In case a license of a collective management organization is revoked, the Authority shall ensure continued collection and remittance of royalties to rights holders.

(7) A collective management organization shall submit to the Authority information on its total collection and distribution of royalties annually.

Approval of
tariff

108. (1) Despite any other provision in this Act, no collective management organization shall—

- (a) impose or collect royalties based on a tariff that has not been approved and published in the Gazette by the Cabinet Secretary; or
- (b) levy royalties on users exempted by the Cabinet Secretary through a notice in the Gazette.

(2) A licensed collective management organization shall establish a suitable digital system for the purpose of automating the collection and distribution of royalties.

Inspection and
Supervision of
Collective
Management
Organizations

109. (1) The Authority may authorize a qualified independent auditor to inspect the books of accounts and records of a collective management organization under certain circumstances outlined by the regulations.

(2) The collective management organization shall produce and make available all the necessary books, accounts, records, and other documents to the auditor during the inspection.

(3) Failure to produce the required materials within the required time frame constitutes a breach of which the Authority may impose an administrative penalty as may be prescribed.

(4) Following the inspection, the auditor shall report to the Authority on any breaches or non-observances of this Act or regulations, irregularities in business conduct, mismanagement, or any other issues requiring remedial action.

(5) The Authority shall, after giving the collective management organization reasonable opportunity to respond, issue directions to the organization based on the findings from the inspection report.

Directions and
Orders of the
Authority.

110. If the Authority determines, based on an audit or inspection report, that a collective management organization is conducting its business contrary to this Act, its regulations, or any other applicable law, or in a manner that is not in the best interest of its members, the Authority may—

- (a) issue directions to improve the organization's management or compliance with legal requirements;
- (b) recommend the reconstitution of the organization's board of directors
- (c) direct the organization to take any necessary actions to rectify deficiencies; and
- (d) revoke the collective management organization's license.

Record
Keeping.

111. (1) A collective management organization is required to maintain and update minutes of all resolutions and proceedings from their meetings.

(2) As soon as possible after the end of each financial year, a collective management organization shall submit to the Authority--

- (a) a report detailing its operations during that year; and
- (b) a copy of its audited accounts for that year.

PART XIII – COPYRIGHT TRIBUNAL

Establishment
of the
Copyright
Tribunal.

112. (1) There is established the Copyright Tribunal.

(2) The Tribunal shall consist of members appointed by the Judicial Service Commission comprising —

- (a) a chairperson who is a person qualified to be a judge of the High Court; and
- (b) four other persons who have demonstrated competence in matters relating to Copyright.

(3) A person shall be qualified to be appointed as a chairperson or a member of the Tribunal if that person has satisfied the requirements of Chapter Six of the Constitution.

(4) The Chairperson and members shall hold office for a term of three years and shall be eligible to be appointed for one further term.

(5) The chairperson and members shall serve on a part time basis

Original
Jurisdiction of
the Tribunal.

113. The Copyright Tribunal shall have the original jurisdiction to adjudicate matters including—

- (a) disputes over copyright ownership;
- (b) matters related to moral rights and their infringements;

- (c) disputes over unreasonable terms or conditions for granting a license imposed by a collective management organization;
- (d) unreasonable refusal by a collective management organization to grant a license.
- (e) objections by users over the quantum of fees charged for a license or published tariffs.
- (f) refusals by a collective management organization to admit a person as a member;
- (g) claims of fair dealing;
- (h) claims of equitable remuneration;
- (i) matters concerning counter take-down notices;
- (j) disputes between collective management organizations related to operational matters;
- (k) requests for advisory opinions on copyright and related rights; and
- (l) issuance of *Anton Piller* orders.

Appellant
jurisdiction of
the Tribunal.

114. The Copyright Tribunal shall have the appellant jurisdiction to adjudicate Appeals against—

- (a) the Authority's refusal to grant an operating license or registration certificate to a collective management organization;
- (b) unreasonable terms or conditions imposed by the Board for granting an operating license; and

(c) the Authority's refusal to register a copyright work.

Powers of the
Tribunal

115. (1) In exercising its jurisdiction, the Tribunal may issue interlocutory orders, injunctions, damages, and costs at its discretion.

(2) The Copyright Tribunal may order the issuance of an operating license or the grant of a license for a copyright work, contingent on the payment of the applicable fees.

Discipline and
removal of
members.

No. 1 of 2011

116. The Chairperson and the members shall be disciplined or removed from office on grounds and in accordance with the provisions of the Third Schedule to the Judicial Service Commission Act, 2011.

Staff of the
Tribunal

No. 1 of 2011

117. (1) The Judicial Service Commission shall appoint such staff of the Tribunal as may be necessary for the proper functioning of the Tribunal and in accordance with the Judicial Service Commission Act, 2011.

(2) Without prejudice to subsection (1), the Judicial Service Commission may second staff to the Tribunal as may be necessary for the performance of the functions of the Tribunal.

Procedure
before the
Tribunal.

Cap 80

Cap 21

118. (1) The Tribunal shall regulate its own procedure in hearing and determining appeals.

(2) In exercise of its jurisdiction, the Tribunal shall not be bound by the strict rules of the evidence Act and the Civil Procedure Act.

Expenses of
the Tribunal

119. The expenses of the Tribunal shall be paid out of the Judiciary Fund.

Arrangement
of business

120. (1) The chairperson of the Tribunal shall be responsible for ensuring the orderly and expeditious discharge of the business of the Tribunal.

(2) Without prejudice to the generality of subsection (1), the chairperson may give directions relating to the —

- (a) arrangement of the business of Tribunal;
- (b) the places and time at which the Tribunal may sit generally; and
- (c) the procedure of the Tribunal at a particular place.

Rules of the
Tribunal

121. The Chief Justice may make rules governing the practice and procedure of the Tribunal.

PART XIV—GENERAL PROVISIONS

Regulations.

122. The Cabinet Secretary may make such regulations as may be necessary to give effect to this Act, and prescribe anything required to be prescribed.

Savings and
Transitions

123. (1) In this Part, “Former Board” means the Kenya Copyright Board established under the Copyright Act, 2001;

(2) The Authority shall be the successor to the former Board.

(3) On the Commencement date of this Act—

- (a) all contracts, rights, duties, obligations, assets and liabilities of the former Board shall vest to the Authority;
- (b) any license, permit or any approval given by the former Board in exercise of its functions shall be taken to have been issued by the Authority under this Act;
- (c) all actions, suits or legal proceedings pending by or against the former Board shall be carried on or prosecuted by or against the Authority;
- (d) a member of the Board of the former Board in office on the Commencement date shall continue to be a member of the Board of the Authority as though appointed under this Act and shall serve the remainder of their term;

- (e) the Executive Director of the former Board in office on the Commencement date shall continue to serve as the Chief Executive Officer of the Authority as though appointed in accordance with this Act and shall serve the remainder of their term;
- (f) the staff of the former Authority shall transition to be the staff of the Authority on the same terms and conditions of service; and
- (g) the pension scheme established by the former Board shall be the pension scheme of the Authority.

Consequential
amendments

124. The laws set out in the first schedule are amended in the manner specified.

Repeal of the
Copyright
Act,2001

125. The Copyright Act No. 12 of 2001, is repealed.

FIRST SCHEDULE

Consequential amendments

MEMORANDUM OF OBJECTS AND REASONS

Statement on Objects and Reasons of the Bill

The main objective of this Bill is to offer robust and efficient protection for copyright works, thereby fostering creativity and innovation in Kenya's economy. Additionally, the Bill aims to synchronize the legislative structure with the Constitution and international copyright treaties and conventions that Kenya is a part of, such as the Marrakesh VIP Treaty and the Beijing Treaty on Audiovisual Performances.

There is a pressing need for a new statutory system to align with the best international standards for copyrighted works management and regulation. This Bill also addresses modern challenges concerning the successful management of collective management organizations in Kenya. The Bill comprises the following sections:

PART I deals with preliminary provisions.

PART II provides for the establishment of the Kenya Copyright Authority, the functions and powers of the Authority. **Clause 7** establishes the Board of the Authority and the composition. **Clause 11** provides for the Executive Director of Authority who shall be competitively appointed. **Clause 12** provides for the corporation secretary who shall be appointed by the Board and be the Secretary to the Board.

PART III sets out the subsistence, ownership and duration copyright in Kenya. **Clause 17** sets out works that are eligible for Copyright. **Clause 24** sets out the Duration of copyright in Kenya before the works are available in the public domain whilst **Clause 25** provides the Duration of copyright for foreign works. **Clause 28** provides works that are not eligible for Copyright in Kenya including the National emblems, flags and symbols, national symbols and emblems of Kenya and other sovereign countries due to the sentimental value and national pride attached to them. **Clause 30** mandates the Authority to establish and maintain the National Rights Registry of works protected under the Bill.

PART IV provides for the acts permitted in relation to copyright works such as making temporary copies, copies for private use, research and private study and copies for text and data analysis for non-commercial research. **Clause 32** provides for the permitted acts in general

provided the author is acknowledged including fair dealing which has been expanded to broaden the scope. **Clause 41** provides for the general exclusion for educational institutions. **Clause 45** sets out the exceptions and limitations for broadcasting while **Clause 46** sets out the exceptions and limitations for the visually impaired persons.

PART V provides for Provisions on related rights. **Clause 50** provides for the broadcasting of works incorporated in audio-visual works. **Clause 51** provides for the nature of copyright in sound recordings where the copyright in sound recordings shall confer upon the owner exclusive rights to control certain acts in respect of the sound recording. **Clause 53** provides for the exclusive rights of the performers. **Clause 54** provides for the single equitable remuneration for exploitation of Audiovisual works. **Clause 55** provides for the duration of rights conferred under the part. **Clause 56** provides for the Private Copying Remuneration.

PART VI provides for the moral rights. **Clause 57** provides for the moral rights of an author and performer. The rights are to be enjoyed irrespective of the author's economic rights and the transfer of such rights and they remain inalienable. **Clause 62** provides that the moral rights are not assignable while **Clause 63** provides for the transmission of moral rights on death.

PART VII outlines dealing with rights in copyright works. **Clause 64** outlines the artist's right of resale. **Clause 65** provides for the Assignment and license of copyright while **Clause 66** provides for the terms of licensing. **Clause 68** sets out the reversion of rights by the exclusive licensor while **Clause 69** provides a new avenue on reversion of rights in the case of insolvency in order to protect the rights of the copyright owner. Lastly, **Clause 70** provides for ring back tunes and the criterion in terms of percentages for distribution of the revenue generated from the ring back tunes to the relevant parties.

PART VIII provides for the infringement of copyright or related rights. **Clause 71** provides acts restricted by copyright in a work where proper authorization has not been obtained. The Part further provides for various infringements such as; on the right of performers, of copyright by copying, by rental or lending of work to the public, by performance, showing or playing of

work in public, by communication to the public and by making adaptation or act done in relation to adaptation. **Clause 78** provides for secondary infringement of copyright while **Clause 79** outlines secondary infringement on provision of apparatus for infringing performance. **Clause 81** outlines the various reliefs and remedies for infringement including the award of statutory damages. **Clause 82** provides for the removal or alteration of technological protection measures while clause 83 provides for the penalties against technological protection measures.

PART IX sets out the liability for online intermediaries. **Clause 84** defines online intermediaries and outlines instances where the online intermediary will not be held liable for copyright infringement. **Clause 85** sets out the manner, content and procedure of issuing Takedown notices while **Clause 86** provides for the counter notice. **Clause 88** sets out the roles of online intermediaries.

PART X sets out the remedies for infringement. **Clause 89** outlines infringement actionable by the copyright owner. The aggrieved party shall be entitled to all remedies including damages, injunctions, accounts of profits or any other relief consistent with those available for the infringement of other types of property rights. **Clause 98** provides the various penalties for infringement.

PART XI provides for Enforcement mechanism. **Clause 100** provides for Inspectors who are appointed by the Board of the Authority with the approval of the Cabinet Secretary. The inspectors appointed are either any staff of the Customs department or a police officer who performs the functions of an Inspector under the Bill. The Part further provides the authority of the inspectors to arrest, the conduct of prosecution and measures at the border.

PART XII outlines the Collective Management of Rights. **Clause 106** sets out the formation of a CMO of creative sector to either audiovisual, music, visual or book publishing. **Clause 107** provides for the licensing procedure of the collective management organisations whereby the license term shall be for three years. **Clause 109** empowers the Authority to Inspect and Supervise the collective management organisations. The organisations are required to maintain

and update minutes of all resolutions and proceedings of all meeting. **Clause 11** sets out the Record Keeping mechanisms for the collective management organisations.

PART XIII provides for the Copyright Tribunal. **Clause 112** provides for the establishment of the tribunal consisting of members appointed by the Judicial Service Commission and their qualifications. **Clauses 113 and 114** confer the tribunal with both original and appellate jurisdiction regarding copyright disputes. Clause 115 sets out the powers of the tribunal. **Clause 121** delegates authority to the chief justice to make rules governing the practice and procedure of the tribunal.

PART XIV provides for the General provisions. **Clause 122** provides for Regulations where the Cabinet Secretary may make necessary regulations to give effect to this Bill. **Clause 123** provides for Savings and Transitions from the former Act while **Clause 124** provides for the Consequential Amendments related to the Bill. Lastly, **Clause 125** provides for the Repeal of Copyright Act no. 12 of 2001.

Statement on how the Bill concerns county governments

The Bill does not concern county governments in terms of Article 110 of the Constitution as it does not contain provisions that affect the functions and powers of the counties as set out in the Fourth Schedule to the Constitution.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill delegates legislative power to the Cabinet Secretary responsible for matters relating to copyright and related rights to make regulations for the carrying into effect of its provisions. The Bill does not limit any fundamental rights or freedoms.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall occasion additional expenditure of public funds.

