Power of IP innovations in driving economic growth
3-4. Power of Innovation to Drive Economic Growth.
5. Fashion design as driver to innovation.
6. Innovation in streaming, a blessing and a curse in copyright sector.
7. NFT, a fad that has become real game change in IP.
10. Understanding the intellectual Property Law.
11. KECOBO’s Advisory on acknowledgement of copyright holders.
15. KECOBO Registers success in investigations and prosecution of infringement cases.

EDITORIAL TEAM
Editor in chief: Edward Sigei
Editor: Cyrus Kinyungu.
Sub editor: Lucian Mue.

Design and Layout: Native Green Group Ltd.

KECOBO Executive Director Edward Sigei (Right) and Permanent Presidential Music Commission (PPMC) Director Dr Donald Otoyo (left) display an MOU signed between the two agencies aimed at expanding their framework of cooperation to sustainably promote development and exploitation of music content and capacity building of music industry in Kenya. KECOBO Board member Juma Odemba (centre) witnessed the signing ceremony.

KECOBO Executive Director Mr. Edward Sigei (left) giving remarks during the World Intellectual Property Day Celebrations organised in partnership with Partners Against Piracy. With Him is Mr Mike Strano of PHAT (Centre) and Kenya Film Commission CEO Mr Timothy Owase.

KECOBO staff pose for a photo with creatives and lawyers who participated during a copyright clinic and training for visual artists held at Kuona Trust.
THE POWER OF INNOVATION TO DRIVE ECONOMIC GROWTH

By Paul Kaindo

Intellectual Property (IP) is a creation of the human mind. IP rights are intangible property rights that enable creators to protect their innovations from unauthorised use. There are different types of Intellectual property rights. These include patents, copyright, trademarks, trade secrets, industrial designs and geographical indications among others. The presence of Intellectual property rights has transcended all domains of knowledge such as education, entertainment-media, art, literature and music.

IP allows one to protect innovation, creativity and investment in know-how and quality. The creators enjoy exclusive rights allowing them to fight competitors. Youth as young entrepreneurs may develop or create their own trademarks or create industrial designs or copyright in the course of their day-to-day activities or in the course of their business. These creations are protected under IP.

Different jurisdictions have put in place rules that ensure that innovations are effectively protected and commercialised. The main goal for protecting Intellectual Property is to act as an incentive for more people to invest in research and development.

The investments create room for more people to get creative and come up with more innovative ideas.

The youth are the most valuable human capital and constitute a country’s engine of growth. They have so much untapped potential and protecting their innovation and creativity fosters a culture that drives economic growth.

The youth are endowed with the gift of imagination without limits and their uniqueness and ingenuity knows no bounds. Therefore, it is imperative that they are educated about IP rights and the benefits that may accrue to them even from an entrepreneurship standpoint.

Africa as a continent has an abundance of ideas which are not converted into viable and profitable businesses resulting in lost IP. As a result, the young entrepreneurs are becoming a powerful force, creating employment for their peers, growing economies and transmitting their values through entrepreneurial choices. One cannot deny the effects of the numerous technological advancements that have arisen in the past decade.

In as much as technology has affected the world positively, there are still negative effects which if left unchecked may lead to adverse effects on the general population in the near future. Many countries around the world are working towards achieving sustainability in different sectors.

The goal is to ensure that the world is in a better position today and will continue being in a better position for the enjoyment by the future generations. Through IP, the goal of sustainability is within reach as young people come up with great ideas such as how recycling material could lead to better innovations while doing good to the environment.
For the past two years, the world has been fighting the covid-19 pandemic. Scientists and Pharmaceutical giants developed, commercialised and implemented a full cycle vaccination programme which ensured that the mortality rate was low.

This is a perfect example of why IP is important. Through developing these vaccines and within a short time frame, lives were saved. More people globally got access to the vaccines and in some countries, licenses were granted to allow them to create generic versions of the vaccine.

The covid-19 pandemic will forever be in the history books as a show of how the medical sector has taken strides through investments in research and development for the betterment of society. However, without strong IP protection, such programmes would be ineffective.

The incentive to invest significant resources in core research and development exists for the sole purpose of making reasonable monetisation of products through exclusive rights accorded through patent protection and enforcement.

IP development and commercialisation galvanises further research not for profit only but also for academic entities to ensure that generations to come enjoy a safe and healthy lifestyle. The youth have a duty to take inspiration from the IP owners that have thrived from the commercialisation of IP.

This is because innovation is not a want but a need and the youth at the school and university level need to be extremely involved to develop a robust IP culture that is sustainable.

The Kenyan Youth are the driving force of the country’s revolution in innovation and entrepreneurship. Like the industrial revolution, as a way to transform the structure of the economy, tapping into IP is a very viable option to help the youth and encourage them to be creative and think beyond what they can see.

It is encouraging to see the willingness of key economic players willingness and readiness to support the youth in their creative endeavours.

This can be seen through the numerous banks and other financial institutions that have created programmes that help the youth especially in the rural areas.

A good example would be the African Development Bank which has taken leaps in capitalising on Africa’s talented youth and investing in education and skills development especially in science and technology.

As we continue encourage the youth to reach for the stars and be more creative and innovative, it is important to highlight some of the Kenyan youths who have heeded to these insights and done exceptionally well for themselves. A good example would be Gordon Owiti who created the app M-Shamba.

The main focus of the app is the digitisation of Africa’s agriculture and enabling government agencies to solve the crisis of poor food distribution. This innovation helps the farmers in rural Africa to link up with crop researchers and meteorological departments to raise farm yields leading to food security.

It is commendable that the Government of Kenya has taken steps to capture the demographic by setting aside an Innovative Fund known as the National Research Fund Kenya to support emerging ideas among the youth. The fund was established in accordance with the Science and Technology.

Act of 2013. The mandate of the fund is to support advancement of scientific research, inventions and innovation for national development. The monies out of the fund are used to award contracts, grants, scholarships, bursaries and finance research systems in all sectors and levels of education.

From an entrepreneurship point of view, it is rather noticeable that SME’s whom IP is integral, are more likely to see growth in their industries.

The mere existence of IP rights, however, does not necessarily guarantee success, there is need to have an IP strategy that is linked with their business strategy.

This allows them to have a competitive edge over other businesses. Therefore, even as the youths in Kenya aspire to be entrepreneurs, it would be beneficial to them to be educated about IP and emulate the business models used by big corporations and successful personalities in the creative space.

In conclusion, there is still so much to do regarding the youth in this country and the support that they require to succeed in their creative and innovative ventures.

Policy makers should develop policies that nurture and support the youths’ innovations. Further, IP should not be treated in seclusion since it is interdependent on many socio-political and economic factors. Forming partnerships and initiating collaborative ventures is imperative for the realisation of these goals.

Therefore, all countries should strive to pool-in their efforts to develop the IP infrastructure for the benefit of the youth and in the larger scheme of things in the economy.
Fashion is an ever-evolving industry with new designs and trends emerging every season. Such trends include Artificial Intelligence (AI) designers and stylists, waterproof clothing, 3D printed apparel among others. But did you know that these innovations in fashion design have also contributed to the development of Intellectual Property? In this article, we explore how fashion designers have helped shape the world of IP.

Fashion design is an ever-changing field that constantly reinvents itself. This can be seen in the way new designers emerge and quickly become household names, as well as in the way established brands regularly come up with new collections that keep people coming back for more.

It is responsible for creating some of the most iconic and recognisable brands such as Enda, Suave, Vivo, Kipato unbranded, Zia Africa, Kiko Romeo, Kidosho Apparel, Maua Wear, Siri studio among many others. However, it is also worth noting that this constant stream of new ideas has contributed to the development of intellectual property law. As designers come up with new concepts and designs, they need to be able to protect their work from being copied or imitated by others. This has led to the development of laws that allow designers to protect their work and it’s something that all fashion designers need to be aware of.

Overall, the fashion design industry is a fascinating one that is always evolving. It is an industry that is full of creativity and innovation, and it’s also one that has a significant impact on the world of intellectual property.

The role of Intellectual Property (IP) in fashion design

IP is a key ingredient in the fashion design industry. It plays an important role in facilitating the process of taking innovations in fashion design to the marketplace and enhancing the competitiveness of fashion businesses.

IP exists to reward the original innovator by making it difficult for others to duplicate the intangible aspects of the innovation, thereby sustaining the market advantages of the original innovation. The fashion industry can use IP to protect a variety of creations including components of fashion design, literary and artistic works, images and symbols used in commerce. It should be noted that ideas are NOT protectable. However, artistic expressions of ideas can be appropriately protected under intellectual property laws.

IP is made up of various rights that protect fashion designers and allow them to control and profit from the commercialisation of their designs. Some of these rights arise automatically, such as copyright (registration is however recommended), while the rest require registration. These IP rights include:

- **Copyright**, which protects original literary and artistic works in fashion such as design drawings, fabric prints, marketing materials, photographs that may be taken of fashion pieces, fashion websites and fashion software.
- **Industrial designs**, which protect the look and feel of the design, including the patterns, shapes, configurations, or ornamentation thereof which may be three-dimensional features, such as a fabric print. There is much greater reliance on Industrial design protection for fashion designs.
- **Trade secrets**, which protect the confidential information a fashion business owns that is of commercial value for instance customer, list of key suppliers and/or buyers, software tools for fashion design, manufacturing process, logistics management of the entire value chain among others.
- **Trademarks**, which protect words, phrases, letters, numerals, shapes, colours, logos, labels, or a combination of these that a company/business may use. Examples of famous trademarks in the fashion industry include Nike, Gucci, Chanel, BOSS among others. Trademarks allow fashion designers to develop a bond with their customers through their brand names.
- **Patents**, which are not the most used in the fashion industry unique devices, processes or methods for creating clothing or designs. They protect technical innovations such as the production process or innovative technology used to create the product. For example, one may explore the options of registering for a patent if he/she has developed a new piece of technology that prints fabric or a new technology that allows shoes to be water resistant.

Intellectual capital and creativity drive the fashion design industry. By protecting intellectual capital as IP assets, designers can increase income through the sale, licensing and commercialisation of differentiated products to increase market share, raise profits, reduce the risk of infringing third-party IP rights and enhance the value of the IP asset to attract investors and financing institutions. Fashion designers should therefore seek sound legal advice from an IP expert at an early stage.

Fashion design has long been a field where creativity and innovation are highly valued. In recent years, however, the role of fashion design in the development of Intellectual Property has become increasingly important.

As more and more designers seek to protect their designs through copyright, industrial designs, trade secrets or trademarks, it is clear that fashion design is playing an important role in the development of intellectual property law. This trend is likely to continue as designers continue to push the boundaries of creativity and innovation in their work.

The writer is an advocate of the Hight Court of Kenya and IP lawyer.
S streaming, according to European Union Copyright Directive of 2019, is defined as a service undertaken by an online content-sharing service provider. The online content-sharing service provider is a provider of an information society service of which the main or one of the main purposes is to store and give the public access to a large amount of copyright-protected works such as music or video uploaded by its users, which it organises and promotes for profit-making purposes. Streaming services in music have emerged as an attempt to use technology to enable artists earn income on platforms such as Boomplay, Mdundo, MusicTime, Spotify, and Apple Music. These platforms have been advocated for tools to combat illegal and unlawful use of artists’ works as well as an opportunity for artists to monetise their works.

Music Streaming and right to equitable remuneration

While music streaming serves as additional source of income, a study titled ‘Artists in the Digital Music Marketplace: Economic and Legal Considerations’, June 2021, undertaken by Christian L. Castle, Esq. and Prof. Claudio Feijóo and commissioned by WIPO Standing Committee on Copyright and Related Rights determined that there exists a streaming imbalance as a result of unequitable compensation for performers of copyrightable works such as singers and musicians. Some of contributing factors in unequal compensation for performers by the music streaming platforms have been caused by use of pro rata system of royalty distribution. In this model, all the money collected from subscribers or ads for a given month goes into a single pot, which is then divided by the total number of streams. The pro rata system, arguably, favours artists with mass appeal. The uneven royalty distribution model coupled with features like playlisting (where songs are selected for curated lists with sometimes gigantic followings) and algorithmic recommendations for most popular artists in the streaming platforms have also contributed to less earnings for lesser-known artists. As a result of this system and inefficiencies in some of the streaming platforms, there is lack of transparency and accountability in terms of royalty distributed to artists and even worse off where an intermediary is involved. In addressing the issue of unequal compensation from music streaming, the UK Parliament in September 2021 published a report titled ‘Economics of Music Streaming: Government and Competition and Markets Authority Responses to Committee’s Second Report’. It recommended for a provision on right to equitable remuneration in the Digital Millennium Copyright Act (DMCA) of 1998. Such a provision in the DMCA would allow performers to receive money directly and have more control over their works without an intermediary.

In Kenya efforts to introduce the right to equitable remuneration section 30A in the Copyright Act, CAP 130, Laws of Kenya were effectively stopped after the said section was declared unconstitutional by the Constitutional Court at Malindi. Section 30A of the Copyright Act had sought to unconstitutionally 1) reduce performers artistic freedom by introducing an intermediary in collection of royalties and 2) mandate performers to join a Collective Management Organisation (CMO) to receive their royalties.

NFTs in music, Metaverse, Streaming

Presently one of the areas driving Innovation in the Music industry through unlocking new tools for artists to express their creativity, make more connections with fans and new revenue as per the International Federation of the Phonographic Federation (IFPI) Global Music Report of 2022, is the metaverse. The value of the metaverse is projected to be $5trillion dollars by 2030 in a Mckinsey report published in June 2022. One of the ways of taking advantage of the metaverse has been by creating an Non Fungible Token (NFT) of a song and selling it on a blockchain-based marketplace such as Open Sea, Rarible, Nifty Gateway among others. NFTs are a type of digital asset that is stored on a blockchain. According to the Ministry of Information Communication and Technology report titled ‘Emerging Digital Technologies for Kenya: Exploration and Research’ published in June 2019, blockchain technology is a distributed ledger or a decentralised database that permanently records transactions between users without requiring a third-party. These transactions are transparent and auditable, secure, private, permanent and distributed. As such, the value proposition for blockchain technology is that it allows for efficient, transparent, and accountable transactions. These features got Afrobeats legend Don Jazzy and music producer in collaboration with Osinachi (born Prince Jacon Osinachi Igwe) one of Africa’s foremost crypto artist to create a collection of NFTs, which eventually sold out under the title Heartbeat, Move and lost. In fact, Don Jazzy’s statement on the value of NFTs in music on medium while launching the NFT collection was that “If everything works out, music will be more valuable and artists will have new tools to better control and creatively distribute their works to fans who in turn will now have new ways to engage with the creations of their favourite musicians”. Essentially, NFTs marketplaces operate as streaming platforms where music uploaded by its users would be stored and given access to the public for profit-making purposes.

As such in order to give performers and artists more control over their works, re-enactment of the right to equitable distribution in the Kenya Copyright Act ought to allow performers to receive directly royalties from streaming of their works. NFTs marketplaces have led the way so should streaming platforms.
NFT, A FAD THAT HAS BECOME REAL GAME CHANGER IN IP

By Liz Lenjo

They are the latest fad in the digital space; a rather lucrative fad that any digital savvy individual or company would like to sink their teeth in. Non-Fungible Tokens are digital assets that can be bought/ sold or even licensed. Their emergence has shaken the intellectual property space as we know it. With the rise of these digital assets, discussions have arisen from what regime of IP protects what and what contractual relationships would safeguard these artists or ensure that there is a high return on the transactions made.

We have seen developments like in the European Union (EU) Intellectual Property Office where now there is a growing trend of protecting digital assets. Some applicants have found ways to secure these properties by way of trademark registration. For example... We have also seen copyright registration in the original works before they are converted into digital assets or in their non-digital format.

However, in my analysis, contracts are what shape the business game of NFTs.

The nature of the relationship between the artists, the minting and distribution platforms, commissioning parties, and buyers is one that needs intricate review and dissection. Otherwise, it could be a nightmare for either party who made uninformed decisions and loses out on an NFT deal/transaction. What is evident is that to be successful in the NFT game, one must be intellectual property law savvy. The calculated strategies are what make the venture as profitable and enjoyable as possible. This savviness comes in handy when one needs to navigate the "grey areas". For example, what happens when a party no longer wants to make the NFT available? The system can only "burns" it but it retains a copy in some format on the back end. Does that change the outcome, contract provisions could help navigate that, for example. Eventually, the law shall catch up.

Despite being a fad, NFTs have become a real game changer. Video games like COVET FASHION TM have the proprietors and collaborators smiling to the bank and consumers enjoying buying digital assets like clothes and fashion accessories. We have seen some brands convert some of these digital assets into limited edition collectibles as other revenue sources.

Some notable examples include Louis Vuitton skins on the League of Legends game and Dolce and Gabbana’s record-breaking Collezione Genesi which made about USD 5.7Million to the fashion empire.

As NFT grows, new collaborations and fusions of technology are taking shape. Augmented Reality and the Metaverse are providing platforms that enable the diversification of IP assets into the digital space for all businesses across the board. However, entertainment, music, fashion and film are the greatest beneficiaries when the NFT game is played well.

Awareness of Intellectual Property laws and contracts shapes the stability of a business when getting to the NFT space. As an entity maximises its assets and profitability, there is an outlook on the past, present, and future of its IP and business strategy.

There is loads of room for the African creative economy to plug in and make its mark in the NFT space. The question is; Who is ready to take the risk?
KECOBO Chief Legal Counsel Mr. Paul Kaindo in discussion with a creative during a copyright clinic for Visual Artists held at Kuona Trust.

Dr. Christopher Kenyariri (left), a legal practitioner and consultant at various institutions including Catholic University pose for a photo with Kenya Copyright Board, Executive Director Mr. Edward Sigei when he paid him a courtesy call in his office.

Some members of the Partners Against Piracy (PAP) group pose for a photo during a partnership meeting with Copyright Coalition of South Africa team led by Ms. Chola Makgamethe (in a black blouse).

Kenya Copyright Board officers pose for a group photo with journalism students & lecturers of Uzuri Institute who visited the Board to learn more about copyright.

Mr & Mrs Moipei, the parents to the famous Moipei quartet, when they paid courtesy call on Kenya Copyright Board Executive Director Mr Edward Sigei to learn more about KECOBO’s mandate and the registration of copyright.
June Gachui of JGIP Consultants emceeing at the World Intellectual property celebrations organized by Partners Against Piracy.

KECOBO management team and members of the Board of Directors during a retreat held at Elmer Resort and Spa in October.

KECOBO Executive Director with Board of Directors during a Board retreat held at Olmert Spa and Resort.

KECOBO staff members practice resuscitation exercise during a first aid training conducted by a team of Paramedics from St. Johns Ambulance.

KECOBO Chief Legal Counsel Ms. Faith Amatika conducting a training on copyright for software developers at Swahili Pot Hub in Mombasa.

KECOBO Executive Director Mr. Edward Sigei demonstrating to members of HART the BAND how to register copyright online through the National Rights Registry.

KECOBO Executive Director Mr Edward Sigei demonstrates to members of HART the BAND how to register copyright online through the National Rights Registry.

KECOBO Staff sharing a light moment with a client during the 23rd Nairobi International Book Fair held at Sarit Centre, Westlands.

KECOBO Executive Director with Board of Directors during a Board retreat held at Olmert Spa and Resort.

KECOBO staff members pose for a photo after a tree planting exercise in Ngong Forest, Rowalan Scouts Camp.

KECOBO Executive Director Mr. Edward Sigei sharing a light moment with Mr Mwaniki Mageria, a member of the KECOBO Board of Directors.

Kenya Copyright Board Executive Director Edward Sigei (3rd right) had the pleasure of hosting HART the BAND in his office. The band members, who were accompanied by Maurice Okoth of Talanta Mtaani Show, learnt more about online copyright registration on the National Rights Registry.

Kenya Copyright Board Executive Director Edward Sigei (3rd right) had the pleasure of hosting HART the BAND in his office. The band members, who were accompanied by Maurice Okoth of Talanta Mtaani Show, learnt more about online copyright registration on the National Rights Registry.
The youth of today are an incredible and largely untapped source of creativity and ingenuity. Across the globe, young people are stepping up to innovation challenges using their energy, curiosity and creativity to steer a course towards a better future. Their fresh perspectives and “can do” attitude is already reshaping approaches and driving action for innovation and change. However, to advance their ambitions, the youths need to know how intellectual property rights can support their goals, help transform their ideas into reality, generate income, create jobs and make a positive impact on the world around them.

What is intellectual property?

Intellectual property (IP) refers to creations of the mind, such as inventions of literary and artistic works, names and images used in commerce. There are two main branches of intellectual property namely, industrial property and copyright. Industrial property includes trademarks, patents, industrial designs, geographical designs and trade secrets. Copyright on the other hand relates to literary, artistic and musical works. Protection of intellectual property by law enables people to earn recognition or financial benefit from what they invent or create. By striking the right balance between the interests of innovators and the wider public interest, the intellectual property system aims to foster an environment in which creativity and innovation can flourish.

Copyright

Copyright refers to an exclusive bundle of rights granted by law to authors of literary works, producers of audiovisual works and films, architects, performers, broadcasters and other creators of literary, musical, artistic, audio-visual, sound recordings and broadcasts. Copyright protects the expression of an idea from being copied without authority and not merely the concept or the idea. There are two types of rights under copyright:

- Economic rights which allow the rights owner to derive financial reward from the use of their works by others by giving him autonomy to reproduce, adapt and translate, distribute and broadcast and perform the work in public.
- Moral rights which entitle the author to claim authorship of the work and object to distortion or distortion which is prejudicial to his honour. These rights are independent of economic rights and are non-transferable.

In Kenya, copyright protection is vested in the work once it is in concrete form without need for registration. This position is adopted worldwide by member states to the Berne convention.

Nonetheless, Kenya has the National Rights Registry (nrr.copyright.go.ke) system which allows for the voluntary registration of copyright. Such voluntary registration systems can help solve disputes over ownership or creation, as well as facilitate commercialisation of copyright. The certificate issued after registration can be used as collateral in a bank.

Patents

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application. In principle, the patent owner has the exclusive right to prevent or stop others from commercially exploiting the patented invention. In other words, patent protection means that the invention cannot be commercially made, used, distributed, imported, or sold by others without the patent owner’s consent. Patents are territorial rights. In general, the exclusive rights are only applicable in the country or region in which a patent has been filed and granted, in accordance with the law of that country or region. The protection is granted for a limited period, generally 20 years from the filing date of the application.

Trademarks

A Trademark is a sign which serves to distinguish the goods of an industrial or a commercial enterprise or a group of such enterprises. The sign may consist of one or more distinctive works, letters, numbers, drawings or pictures, monograms, signatures, colours or combination of colours. The sign may consist also of combinations of any of the said elements.

Geographical Indications

A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. To function as a GI, a sign must identify a product as originating in a given place. In addition, the qualities, characteristics, or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production. A geographical indication right enables those who have the right to use the indication to prevent its use by a third party whose product does not conform to the applicable standards.
COPYRIGHT & PUBLISHING FOR THE NEW ERA

By Caroline Kagendo

The world has changed and so must we change with it. Significant changes in art, science, politics, health, economy and technology have been witnessed in the past decade thus necessitating new thinking at both authorship and publishing levels. As such, authors and publishers have kept innovating and incorporating new technologies to enable them to meet the societal expectations, remain relevant in the fast-changing world and ensure sustainability of the publishing industry. The 23rd National International Book Fair, was held at Sarit Expo Centre, Westland’s, Nairobi from 28th September to 2nd October 2022. The book fair was organized by the Kenya Publishers Association, and attracted many visitors and exhibitors such as the Kenya Copyright Board, Kenya Literature Bureau, Moran Publishers, Longhorn publishers, Phoenix Publishers, Bookmark Africa, Oxford University Press and Evangel Publishing House just to name a few.

The exhibitors each had their own stand where they displayed their various publications and visitors would come round buying, seeking familiarisation with the publishers or asking questions.

The Kenya Copyright Board, which has the mandate of conducting trainings, creating public awareness on matters copyright and supporting creativity by efficient administration and enforcement of copyright laws in Kenya, was on stand 67 where it received dozens of visitors who were educated about copyright, its importance and the registration process.

The staff manning the stand issued the visitors with learning materials that would help the readers understand more about copyright and related rights.

Owing to the dynamic nature of Kenyan authors, publishers, printers, booksellers and other players in the book chain, there is need to strengthen collaborations and partnerships regionally and internationally. In the same breath, the new local players in the industry need to be nurtured and developed. The book fair facilitated such opportunities by attracting exhibitors from all over Africa, Asia and other parts of the world.

ADVISORY ON ACKNOWLEDGEMENT OF COPYRIGHT HOLDERS

By Cyrus Kinyungu

The widespread usage of photographs, videos, illustrations, and books from third parties in social media without sufficient acknowledgement has caught the attention of Kenya Copyright Board prompting the Executive Director to issue an advisory.

Under Copyright law, authors of a copyright work have the right to be adequately acknowledged when portions of their works are used within fair dealing due to moral rights requirements, the Board advised.

“Take note that the widely used term ‘courtesy’ e.g., ‘photo courtesy’ is NOT an acknowledgement,” warned KECOBO Executive Director Edward Sigei in the advisory.

In the age social media, he added, the author account may be added e.g., @sihamikenyafilms. In the case of books, all contributors to a copyright work e.g., illustrators of books and other graphic material, should be clearly and sufficiently acknowledged regardless of the terms of engagement as they hold moral rights. For example, ‘Illustrations by Eliud Kamau, Kamau Graphics, Kingsway House Nairobi’ would be considered sufficient, he advised.

Graphic artists are advised to always show link to their work by embedding a digital signature or other unique mark.

“An acknowledgement must clearly show the name of the author and in some instances the name of the work if relevant e.g., Maasai Mara Lions, sufficient,” Mr Sigei noted.

“Similar Rights Management information for instance, watermark is now essential in the areas of photographs and videos. The posting of portions of a book, the name of the author and publisher must be included for sufficient acknowledgement e.g. ‘My life in love, by Kimani wa Thika, Africa Grup books, Kijabe Street Nairobi’, Mr Sigei instructed.

Necessary. The names, work titles in bold are fictional. Any similarity with existing works, names, corporations is coincidental.
KECOBO, PPMC TRAIN YOUTH AT THE NATIONAL YOUTH TALENT DEVELOPMENT PROGRAM

By Sharon Chahale

KECOBO partnered with Permanent Presidential Music Commission (PPMC) to deliver trainings at the National youth Talent Development Program. This is a program that promotes talent among the youth in music and dance. It recognises that there are many gifted young people and there is need to educate them on how to find their direction and route in the music industry.

The organisation recognises the need to teach the youth how to package themselves for the market. It is hoped that after the training, the youth involved will gain entrance to different sectors. Pursuant to KECOBO’s training function, the Board partners with like-minded organisation to deliver trainings on copyright and related rights.

The training was packaged to help the youth gain understanding about other government agencies involved in the music space. Such agencies include the Kenya Copyright Board. KECOBO therefore was involved in training youth in different regions on Copyright and related rights. The audiences included musicians, dancers and choreographers. The artists were trained on the basics of copyright and related rights.

They were also trained on contracts and music and what to look out for when signing contracts. They were also trained on copyright registration through the National Rights Registry and the importance of such registration. They were practically taken through steps of registration of copyright on nrr.copyright.go.ke.

The training also included issues of Collective Management Organisations (CMOs), what these organisations are, the importance of joining such organisations and the benefits that accrue from being a member.

KECOBO trained about 300 youth in Kisumu, Kakamega, Eldoret and Isiolo counties, and their environs.

Most Participants gave positive reviews about the trainings, acknowledging the in-depth, interactive and informative presentations. They also appreciated the efforts made by the Board to provide copies of the IEC materials for their future reference. The trainings were a success and more trainings are in the plan for the future.

The Permanent Presidential Music Commission (PPMC) is a government department whose mandate is to coordinate music and dance activities in the country and spearhead the development of the same from mere entertainment activities into a stable industry.

The commission was formed in April 1988 and mandated to implement the report of a task force established to look into the development and preservation of music and dance in Kenya, covering the areas of music education, music research, music in the media, music performances, musicians’ rights and obligations and preservation and conservation of the music and heritage of Kenya, among others.

On the other hand, Kenya Copyright Board (KECOBO) is a State Corporation established by the Copyright Act 2001 and mandated with the administration and enforcement of copyright and related rights.

The Board is responsible for organising legislation on copyright and related rights; conducting training programs on copyright and related rights; enlightening and informing the public on matters related to copyright; licensing and supervising the activities of collective management societies and maintaining an effective databank on authors and their works.
RESPECT COPYRIGHT IN MEMES, KECOBO WARNS

By Edward Sigei

Recently, a series of memes generated from videos made by two Kenyan comic artists named Arap Marindich and Tula have been utilized by individuals and corporates thereby raising significant copyright concerns. A meme is an image, video or text used in social media for humorous or political banter and illustrative of a line of thought on a topic under discussion. Memes are in most cases static images created from a photograph, illustration, text or video that is protected by copyright. A Copyright holder has the exclusive rights to copy, reproduce, make adaptation, publish, and broadcast their work for a fixed period established under the Copyright Act.

In that regard, a copyright owner can create a meme from his photograph or video in exercise of their rights under copyright. Such memes can be exploited for the benefit of the author through advertising and as Non-Fungible Tokens (NFTs). Therefore, a meme generated without the authority of the Copyright owner is an infringement on their copyright particularly the exclusive rights to reproduce, copy, adapt and publish since the original photograph or video undergoes some alteration and incorporation of a text.

While the use of memes in social media is tolerated, its creation and use for commercial purposes can attract significant civil liability and must be cleared from the authors.

It is worth noting that in some cases, content used for generating memes may be in public domain or released under creative commons license. Consequently, corporate bodies must consider conducting due diligence on the status of photographs or videos before being tempted to join the fun.

KECOBO ADVISES CREATIVES ON EXPLOITATION OF SYNCRONISATION RIGHTS

By Cyrus Kinyungu

During the last general election as is common with most elections, creatives expected to make money from politicians who are fond of using their works to draw crowds hoping to convert them into votes. However, some political groups ended up using the works of some creatives without their authority thus denying the artists the right to earn from their works.

One such incident was the complaint by Sauti Sol against Azimio Coalition. Sauti Sol accused the coalition of using its work in an advert without its authority.

The social media discussion following the complaints by Sauti Sol against Azimio Coalition drew the attention of KECOBO and created an opportunity for the Board to educate the public on synchronisation rights and who has the power to issue synchronisation rights.

The incident raised a pertinent question whether all exploitation of sound recordings fall within the power of the Collective Management Organisations (CMOs). “Collective Management Organisations (CMOs) generally issue a license authorising entities to use the sound recordings for Public Performance. It is in public domain that Azimio has obtained a public performance license allowing it to play both local and international music at its rallies and events,” Mr Sigei noted.

“However,” Mr Sigei warned, “the use of sound recording as soundtrack with visual images in a film, video, television show, commercial or other audio-visual production is not part of those uses authorised by a Public Performance License.” He noted that in the case raised by Sauti Sol, synchronisation rights were at issue and as such, a synchronisation license was needed.

“A synchronisation license can only be issued by the composer and publisher. They have the authority to negotiate and issue a synchronisation license,” he advised.

In this matter, the composers/performers alleged that this was not done. “The Collective Management Organisations have no role to play in the issuance of a synchronisation license. Therefore, the use of sound recording for synchronisation in the manner outlined by the complainant without authority is therefore infringement and thus violates Kenyan Copyright Law,” Mr Sigei noted. He noted that the matter was of civil nature and within the power of the parties to settle with or without compensation.
NATIONAL RIGHTS REGISTRY REVOLUTIONISES REGISTRATION OF COPYRIGHT IN KENYA

By Cyrus Kinyungu

It is now two years since the Kenya Copyright Board launched its digital copyright registration platform and over 40,000 copyrights have been registered. The National Rights Registry (NRR) which was launched in April 2020 at the height of the Corona pandemic came in handy to save rights holders from making long journeys from across the country to Kenya Copyright Board’s offices in Nairobi to register copyright. Now it only takes one to have a smart mobile phone, a laptop or a desktop computer and a stable internet to make an application for copyright registration.

And within 48 hours, the Board officers review the application and grant the copyright registration which comes with a digital certificate available in the client’s portal at all times. If the copyright registration is denied, an sms is sent to the client informing them of the decision and an email sent to them with a reason for rejection. For a long time since the launch of the online database accessible on nrr.copyright.go.ke, registration of copyright has been free. However, in October 2022, the Board introduced a small fee for the registration.

The Board only charges Sh100 for registration of all categories of copyright works registered by natural persons apart from registration of software and mobile apps which attracts a fee of Sh500 per work. For corporate clients, registration of all other categories of works attract Sh500 per work while registration of software and mobile apps attracts a fee of Sh1,000. Authors and composers form 31 per cent of those who have registered copyright, closely followed by producers at 23 per cent while publishers and performers tie with close to 30 percent of registered works. Interestingly, 70 per cent of the registered works are in the sound recording category which includes music and spoken words. Literary works form 13 per cent of the registered works followed by artistic works at 8 percent and finally audio-visual works at seven per cent.

In the copyright by language category, works in Swahili take a lion’s share at 35 per cent closely followed by Kikuyu and 18 per cent, English at 16 percent and Kalenjin at 9 per cent.

Gospel music is the most popular genre of copyright works registered with over 63 percent of the works being in this category. Benga, spoken word, Afro Pop, Afro fusion and Genge among others each account for less than 10 per cent of the works registered. The National Rights Registry analysis also shows that men have largely outnumbered the ladies who have registered copyright.

Men have contributed to 69.7 per cent of the copyright registrations while women contribute to only 30.3 percent of registration.

Youths aged between 18 and 30 years form a majority of those who have registered copyright at 45 percent followed by those in the age bracket of 46 to 50 who are at 22.9 percent.

Those in the age of 30-45 are at 20 percent while those above 50 form 11 percent of those who have registered copyright. Besides registration of copyright, the NRR system gives copyright holders the opportunity to make amendments or changes to their registered works, access their work from the portal and print or re-print their certificate at any time from their portal. An applicant can also leave their incomplete application on their platform and revert later on to complete the registration process. The system also allows any person to conduct a search for other copyright works by simply typing the title of the work or the owner on nrr.copyright.go.ke under the field indicated ‘search copyright databases’. You will get results relating to the ownership/authorship of the work in question, date of copyright registration and other relevant information.

The Kenya Copyright Board Staff offer support services if applicants face challenges during registration. An applicant can send an email to nrr@copyright.go.ke for all enquiries concerning registration of copyright.
In implementing one of Kenya Copyright Board’s key mandates, Copyright Inspectors are required to regularly conduct raids to seize pirated goods. Given the sheer volume of infringement cases reported, the department is required to work extra hard to investigate and act on all reported cases across the country.

In the course of the year, the officers had to deal with reported cases of software infringement. The Board managed to successfully prosecute and conclude the case of infringement of Ideate Technologies software. In this case, a director of an engineering company was jailed for a year by a Nairobi court for copyright infringement of an engineering software.

Nairobi Senior Resident Magistrate TN Sinkiyian ordered Kariuki Muchemi, the director of Interconsult Engineers Ltd to pay a fine of Sh120,000 if he was to escape the jail term. The magistrate further ordered him to pay Ideate Technologies, the authorised dealers of the software in Kenya, Sh240,000 as compensation or serve an additional 10 months in prison.

Muchemi was convicted on two counts of copyright infringement. He was found guilty of being in possession of computers containing infringing Auto Card 2009 and 2013 software whose copyright is owned by Autodesk Inc.

On June 10 2014, following a complaint made by Ideate technologies limited, KECOBO inspectors accompanied by the complainant conducted a raid at Interconsult Engineers Ltd. located at Jadala Place along Ngong Lane within Nairobi County. It is during the inspection that Muchemi was found with the infringing software.

The matter was prosecuted by KECOBO’s Senior Legal Counsel Mr. Paul Kaindo. The magistrate further directed that the software be expunged from Muchemi’s computers in the presence of KECOBO officers while contrivances contained in compact discs be delivered to KECOBO for destruction.

To ensure that seized copyright infringing materials do not go back to the market, the Board is required to destroy these materials after successful completion of court case. The destruction of such infringing materials was held in June 2022.

The material destroyed, which weighed close to 6 tons, included; keyboards, monitors, printers, television sets, tonners, satellite dishes, DSTV decoders, amplifiers, CPUs, remote controls, modulators, digital satellite receivers, assorted decoders, power extension cables, GO TV decoders and power unit among many other assorted contrivances used for infringement approximate. The destruction was conducted in an eco-friendly manner by December Waste Services.
The Kenya Copyright Board (KECOBO) views complaints as being key to the continuous improvement of its services. If you have a complaint about KECOBO, its staff or the standard of our services please submit it via either of the listed complaints channels.

<table>
<thead>
<tr>
<th>#</th>
<th>COMPLAINT CHANNEL</th>
<th>CONTACTS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>KECOBO Postal Address.</td>
<td>The Executive Director, Kenya Copyright Board. P.O. Box 34670 – 00100, Nairobi.</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>KECOBO E-mails.</td>
<td><a href="mailto:complaints@copyright.go.ke">complaints@copyright.go.ke</a>, <a href="mailto:info@copyright.go.ke">info@copyright.go.ke</a>, <a href="mailto:corruption@copyright.go.ke">corruption@copyright.go.ke</a></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>KECOBO Hotline.</td>
<td>+254-705-885-033</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>KECOBO Office</td>
<td>+254-20-253-3889/69.</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Website</td>
<td><a href="http://www.copyright.go.ke">www.copyright.go.ke</a></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Twitter</td>
<td>@KenyaCopyright</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Facebook</td>
<td>Kenya Copyright Board</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>CAJ’s Postal Address</td>
<td>The Chairperson, Commission on Administrative Justice (CAJ). P.O. Box 20414 – 00200, Nairobi.</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>CAJ’s E-mail.</td>
<td><a href="mailto:complaint@ombudsman.go.ke">complaint@ombudsman.go.ke</a></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>CAJ’s Office</td>
<td>+254 – 020 – 2270000</td>
<td></td>
</tr>
</tbody>
</table>

The management promises to respond promptly and appropriately. The Kenya Copyright Board also guarantees confidentiality of all communications.

“Protecting Copyright, Encouraging Creativity”