



WIPO-BCC 27th Advanced Training Seminar on Copyright and Related Rights

Country Report

KENYA

**By Ms. Sharon Musimbi CHAHALE
Deputy Chief Legal Counsel
Kenya Copyright Board**



WIPO-BCC Advanced Training Course on Copyright and Related Rights

COUNTRY REPORT

1. Name of country

Republic of Kenya

2. Copyright and Related Rights legislation (details of the copyright/related rights statute or statutes in Kenya with links.

- a) **The constitution of Kenya** – Article 40 provides for the protection of property. Article 40(5) obligates the State to support, promote and protect the intellectual property rights of the people of Kenya. Article 69(1) c further obligates the state to protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities; Article 259 (c) defines property includes any vested or contingent right to, or interest in or arising from intellectual property. The constitution can be accessed through <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>
- b) **The Kenya Copyright Act 2001 (Chapter 130)**- This Act was passed in the year 2001 and was Revised in 2012 and 2014- The Act provides for the protection for literary, musical and artistic works, sound recordings and broadcasts. It also establishes the Kenya Copyright Board which oversees the implementation of the Act as well as International Treaties and conventions relating to Copyright and related Rights which Kenya is a party to. The Act can be accessed through <http://www.wipo.int/edocs/lexdocs/laws/en/ke/ke026en.pdf>
- c) **The Kenya Copyright Act (Amendment) Bill 2017**- The proposed amendments were introduced in parliament and published on 18th September 2017 under gazette notice number 142 of 18th September 2017 inviting members of the public to submit their comments on it. The new bill among other things domesticates the Marrakesh Treaty, provides for ISP Liability and Resale Royalty right. It also amends some definitions in alignment with the new proposals and provides for stiffer penalties in



case o infringement. The bill can be accessed through http://kenyalaw.org/kl/fileadmin/pdfdownloads/bills/2017/Copyright__Amendment_Bill_2017No33.pdf

3. Membership of Conventions, Treaties and Agreements. Kenya has joined:

- a) **Berne Convention for the Protection of Literary and Artistic Works (Paris text 1971):-** Kenya acceded to the Berne Convention on 11th March 1993. It came into force on 6th November 1993 and was later domesticated through the enactment of the Copyright Act in 2001.
- b) **Universal Copyright Convention 1952-1971:-** Acceded to on 7th June 1966
- c) **Rome Convention for the Protection of Performers, Phonogram Producers and Broadcasters 1961:-**
- d) **TRIPS Agreement 1994:-** Signed on 1st January 1995
- e) **WIPO Copyright Treaty 1996:** - Kenya signed the WCT on 20th December 1996 but is yet to ratify it.
- f) **WIPO Performances and Phonograms Treaty 1996:** - Kenya signed the WPPT on 20th December 1996
- g) **Visually Impaired Persons Treaty 2013 or the Audiovisual Performances Treaty 2012).**

4. Government Department responsible for laws on copyright and related rights.

The Kenya Copyright Board under the Office of the Attorney General and Department of Justice established under Section 3 of the Kenya Copyright Act is responsible for the administration and enforcement of copyright and related rights in Kenya.



5. The names of collective management organizations representing or administering the rights of owners of copyright or related rights in Kenya as at 31st August 2019, the rights which they manage or license and the types of right holders they represent. With links to their websites.

a) Kenya Reprographic rights society of Kenya (KOPIKEN):-

b) Performers Rights Society of Kenya (PRISK):- It represent the rights of performers in musical and dramatic works. It is a performer works licensing company appointed as a collecting society under GAZETTE NOTICE NO. 12322.

c) Kenya Association of Music Producers (KAMP):-

d) Music Copyright Society of Kenya (MCSK)

Music Publishers Association of Kenya (MPAKE) license for the year 2019 was not renewed.

The bill incorporates new provision for the domestication of Marrakesh Treaty, ISP Liability and Resale Royalty right. It also amends some definitions in alignment with the new proposals. The Bill further amends section 5 of the Act by clarifying the mandate of the Board. Clause 4 of the Bill contains amendments to section 6 of the Act to align it with the Constitution. Clause 5 of the Bill proposes to amend section 11 of the Act of the Act to provide for the appointment of the Executive Director by the Board and further enhances the qualifications for appointment to be appointed to the position of Executive Director. Clause 6 of the Bill amends section 19 of the Act by providing for the Office of the Auditor -General in line with the Constitution Clause 7 of the Bill further amends the heading in Part III for clarity. Clause 8 of the Bill proposes to amend 22(1) of the Act by inserting the words "or related rights" immediately after the word "copyright" for clarity. Clause 9 of the Bill further proposes to introduce a new section 22A into the Act to provide for voluntary registration of copyright by the owner(s), author(s), assignee(s) or exclusive licensee(s) and for the Board to keep records of such persons in a publicly available register subject to such terms to be determined by the Board. Clause 10 of the Bill proposes to repeals section 26 and replace it with a new section that expands and clarifies the extent of fair dealing in respect to copyright material in literary, musical or artistic and audiovisual works. Clause 11 of the Bill amends the Act by inserting new sections 26A to 26D to provide for an artist resale right for visual artists. Clause 12 of the Bill

proposes to amend section 28 of the Act to clarify and facilitate the operationalization of blank tape fee in respect to copyright in sound recordings. Clause 13 of the Bill further proposes to repeal section 29 of the Act and rephrases the nature of copyright in broadcasts for clarity. 818 The Copyright (Amendment) Bill, 2017 Clause 14 of the Bill proposes to amend section 30 as a consequential amendment. Clause 15 of the Bill contains proposals to amend the Act by inserting a new section 30b in relation to collection and payment of royalties. Clause 16 of the Bill proposes to amend section 33 to provide for assignments and their validity under the Act. Clause 17 of the Bill proposes to amend section 33A for clarity. Clause 18 of the Bill proposes to amend section 35 to address— the right of performers by introducing new wording in order to facilitate collection of blank levy fee; assignments and licenses in order to facilitate the compulsory license provision; and infringements by clarifying the Rights due. Clause 19 of the Bill amend the Act by introducing new sections 35A, 35B and 35C to provide for the protection of Internet Service Providers (ISP) through provisions dealing with ISP liability, safe harbor, takedown and the resultant offences. Clause 20 of the Bill proposes to amend section 36 of the Act by introducing a new subsection dealing with destruction of any material seized upon order of the Court wherein a charged person is convicted. Clause 21 of the Bill amends section 38 of the Act by creating new offences and provides for an objective criteria for sentencing upon infringement. Clause 22 of the Bill proposes to amend the Act by inserting a new section 38A to provide for copyright offences committed by corporate bodies. Clause 23 of the Bill amends the Act by assigning the conduct of prosecution for offences to the Director of Public Prosecutions line with the Constitution. Clauses 24, 25 and 26 of the Bill address the collective administration of copyright by introducing provisions on the title for the organizations reflecting current system/position. The provisions also address corporate governance requirements for the collective organizations and vest an oversight role for the collective organizations on the Board. The Copyright (Amendment) Bill, 2017 819 Clause 27 of the Bill amends section 48 of the Act by introducing provisions relating to the Copyright Tribunal, its composition and disqualification of specified person(s) from being members of the Tribunal. Clause 28 of the Bill amends section 49 of the Act that deals with Regulations and Extension of Application of the Act by introducing provisions clarifying the level of reciprocal obligations for Copyright Protection. Clause 29 of the Bill further proposes to amend the Act by introducing the Second Schedule that provides further clarity on the extent of fair dealing under section 26 of the Act Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms The Bill does not



limit fundamental rights and freedoms neither does it delegate any legislative power. Statement on whether the Bill concerns county governments The Bill does not directly affect the functions and powers of the county governments set out in the Fourth Schedule to the Constitution. 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 not occasion additional expenditure of public funds.