

**THE COPYRIGHT ACT (COLLECTIVE MANAGEMENT) REGULATIONS**

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SCHEDULE —

FORMS

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**THE COPYRIGHT (COLLECTIVE MANAGEMENT) REGULATIONS**

[Legal Notice 178 of 2020]

**1. Citation**

These Regulations may be cited as the Copyright (Collective Management) Regulations.

**2. Interpretation**

In these Regulations, unless the context otherwise requires—

"Board" means the Kenya Copyright Board established under section 3 of the Act;

"general meeting" means the annual general meeting or the special general meeting through which members of a collective management organisation participate and exercise their membership rights;

"management fees" means the amounts charged, deducted or offset by a collective management organisation from revenue generated from rights or from any income from the investment of revenue generated from rights to cover the costs of the management of copyright or related rights;

"member" means a right holder or an entity representing right holders, including other collective management organisations and associations of right holders, who or which has fulfilled the membership requirements of a collective management organisation and admitted by it;

"non-distributable" in relation to amounts due to right holders,

shall be construed in accordance with regulation 13(9);

"proxy" has the meaning assigned to it under the Companies Act (Cap. 486).

"representation agreement" means an agreement between collective management organisations whereby one collective management organisation authorises another collective management organisation to manage the rights it represents;

"rights revenue" means income collected by a collective management organisation on behalf of right holders, whether deriving from an exclusive right, a right to remuneration or a right to compensation;

"royalty" means payment of an agreed rate to a right holder for the use of a copyright work; and

"user" means a person carrying out acts subject to the authorization of right holders, remuneration of right holders or payment of compensation to right holders.

**3. Application for registration**

(1) An application under section 46(2) for the registration of a collective management organisation shall be in Form CMO 01 as set out in the Schedule and accompanied by the following documents—

- (a) a certified copy of the certificate of registration as a company limited by guarantee and incorporated under the provisions of the Companies Act (Cap. 486);
- (b) a certified copy of the Memorandum and Articles of Association of the collective management organisation;
- (c) where applicable, a certified copy of the collective management organisation's annual returns submitted in accordance with the Companies Act (Cap. 486), showing the corporate structure of the organisation during the period ending on the 31st December of the year immediately preceding the date of the application;

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- (d) where applicable, audited accounts of the collective management organisation for the five years preceding the date of the application;
- (e) the names, addresses and copies of valid documents of identity of the members of the collective management organisation;
- (f) any other document or information that the Board may require;
- (g) a detailed report of its operations during the year preceding the date of the application;
- (h) certified copies of the licenses or deeds authorizing the management of the rights; and
- (i) a business plan showing the collective management organisation's financial infrastructure, personnel and capacity for collection and distribution of royalties.

(2) The certificate of registration of a collective management organisation shall be in Form CMO 02 as set out in the Schedule.

#### **4. Action where there is no collective management organisation for a category of rights**

(1) Where a collective management organisation has not been established in respect of any category of rights, or the license for a collective management organisation in a category has been revoked, the Board shall, by notice in a newspaper with the largest circulation, invite fresh applications for the registration of a collective management organisation with respect to that category.

(2) Where more than one organisation applies for the same class of rights, the Board shall evaluate each application separately and register the organisation that best represents the interests of the right holders with respect to that category of rights.

#### **5. Requirements for application for renewal of registration**

(1) At least three months before the lapse of its registration, a collective management organisation shall apply to the Board to renew its registration in Form CMO 03 as set out in the Schedule and the application shall be accompanied by—

- (a) a certified copy of the organisation's certificate of incorporation;
- (b) a certified copy of the organisation's Memorandum and Articles of Association;
- (c) a statement of changes made to the Memorandum and Articles of Association during the year preceding the application;
- (d) certified copies of the organisation's audited accounts for the year preceding application;
- (e) the organisational structure of the organisation and names and qualifications of its senior management;
- (f) a statement of changes in senior management and reasons thereof;
- (g) a statement of the monies collected and distributed as royalties in the year preceding the application;
- (h) a list of members of the organisation and copies of their documents of identity;
- (i) a detailed report of its operations during the year preceding the application; and
- (j) a representative sample of documents of authorisation by members of the organisation.

(2) Where there is a single applicant for a collective management organisation license and the application does not fulfil any of the requirements for registration under the Act, the Board may waive the requirement if it determines that the failure to fulfil the requirement shall not adversely impact the effectiveness of the organisation:

Provided that the collective management organisation shall be required to comply with all the requirements for registration during the period of its registration by the Board.

(3) The Board, in determining whether or not a collective management organisation has the capacity to collect and distribute royalties, shall consider the following factors—

- (a) whether or not there is demonstrated integrity, transparency and accountability in the collection and distribution of royalties by the organisation;
- (b) whether or not the organisation adheres to the national values and principles of governance prescribed by Article 10 of the Constitution;
- (c) the particulars of the directors and their antecedents;
- (d) whether or not the organisation's membership is representative of the holders of the category of rights that it claims to represent;
- (e) whether or not the administrative costs exceed thirty percent of the royalties collected by the organisation;
- (f) whether or not royalties are regularly and properly distributed using approved distribution rules;
- (g) the particulars of the senior management and their academic and professional qualifications;
- (h) the strategies and systems of the organisation for ensuring that royalties are collected and distributed efficiently;
- (i) the audited accounts of the organisation;
- (j) whether or not the organisation has submitted quarterly reports before the tenth day of next quarter; and
- (k) any further information or clarification that may be useful in determining the application for renewal.

(4) Where the information required under paragraph (3) is not available, the Board shall appoint an auditor to conduct a systems', forensic or financial audit of the organisation as may be necessary.

(5) The certificate of renewal of registration shall be in Form CMO 04 as set out in the Schedule.

## **6. Collective management organisations to report**

(1) Each collective management organisation shall submit at least once in every three months a report on any matter regarding its members' interests during the period the organisation is registered including accounts, and minutes of ordinary, special or general meetings of the organisation.

(2) The collective management organisation shall submit to the Board the notices of its Board meetings at least seven days before the meeting and the Board may send a representative to attend the meetings of the organisation.

(3) A person who attends a meeting of a collective management organisation as a representative of the Board under paragraph (2) shall not be eligible or entitled to be paid an allowance by the organisation for attending the meeting.

## **7. Qualification of an inspector**

(1) For the purposes of section 46D(i) of the Act, the Board shall appoint a person experienced and qualified as an accountant to undertake the inspection as may be required under the Act.

(2) An inspector appointed under paragraph (1) shall not be an employee of the Board or the collective management organisation being inspected.

(3) The costs and fees of an inspection shall be met by the Board on delivery of the inspection report.

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## 8. Validity of appointment of an inspector

(1) For the purposes of section 46E (1)(e), an inspector appointed by the Board may conduct the inspection of the collective management organisation for a period not exceeding three months.

(2) For the purposes of section 46E(f), the Executive Director shall appoint a statutory manager by letter and such appointment shall be published in the *Gazette* and two newspapers with the largest circulation.

## 9. Format of reporting financial statements

For the purposes of section 46F(a) and in addition to the annual financial statement of the collective management organisation, the organisation shall submit a detailed summary of total revenue collected from each source of income, royalties paid, any income retained for administrative costs, taxes retained or paid on the income, and incomes not distributed.

## 10. Board's participation in meetings

(1) Each collective management organisation shall submit to the Board a copy of the notice of each annual general meeting or extraordinary general meeting.

(2) A member of a collective management organisation who intends to insert an item in the agenda of a meeting of the organisation shall submit his or her notice of intention to amend the agenda to the Company Secretary and the Board.

## 11. Public participation in the registration of collective management organisations

(1) The Board shall ensure effective public participation in the registration of collective management organisations by according an equal and fair chance to any interested party to apply and be considered for registration or licensing as a collective management organisation under the Act.

(2) The following procedure shall be applicable in the registration or licensing of collective management organisations—

- (a) the Board shall, at least sixty days before the expiry of a license or validity of registration, by notice in the *Gazette*, invite any interested person to apply for grant of collective management organisation license under the Act;
- (b) an application for a collective management organisation license shall be submitted to the Board in the prescribed format not later than fourteen days after the notice under subparagraph (a);
- (c) the Board shall, within fourteen days after the expiry of the period specified under paragraph (b), publish in the *Gazette* the list applicants and invite written representations from any interested person on the suitability of applicant to be licensed or registered;
- (d) the Board shall, within seven days after the expiry of the period specified in subparagraph (c), convene at least one public hearing to receive oral views from the general public on the suitability of each applicant to be licensed or registered; and
- (e) the Board shall, within seven days after the holding of the public hearing specified in paragraph (d)—
  - (i) notify in writing each applicant of the Board's decision setting out its reasons thereof; and
  - (ii) publish in the *Gazette* a summary of its decisions regarding the applications for licensing or registration.

(3) Any notice required to be published under this regulation shall be published in one newspaper of national circulation.

## 12. General obligations of collective management organisations

Each collective management organisation shall—

- (a) act in the best interests of its members;
- (b) not impose on its members any obligations which are not objectively necessary for the protection of the members' rights and interests or for the effective management of the members' rights; and
- (c) shall act for the collective benefit of its members as its sole or main purpose and which fulfils one or both of the following criteria—
  - (i) be owned or controlled by its members; and
  - (ii) be organised on a not-for-profit basis.

## 13. Particular obligations of collective management organisations in relation to right holders

A collective management organisation shall ensure that—

- (a) its members have the right to authorise to the collective management of—
  - (i) members' rights;
  - (ii) categories of rights; and
  - (iii) types of works;
- (b) it manages the matters specified in paragraph (a):
 

Provided that the management of the matters specified in paragraph (a) falls within the scope of the organisation's activities or unless the organisation has objectively justified reasons to refuse management;
- (c) its members have the right to grant licenses for non-commercial uses of any of the matters specified in paragraph (a);
- (d) its members have the right—
  - (i) to terminate the authorization to manage the matters specified in paragraph (a); or
  - (ii) to withdraw the authorisation from a collective management organisation the matters specified in paragraph (a) upon serving the organisations with a fourteen days' notice;
- (e) if there are amounts due to a member for acts of exploitation which occurred under a license granted before the time termination or withdrawal under paragraph (d) took effect, the member shall retain the rights under regulations 12, 13, 19, 20 or 29;
- (f) it does not restrict the exercise of rights referred to in paragraphs (d) and (e) by requiring, as a condition for the exercise of those rights, that the management of the matters referred to in paragraph (a) which are subject to the termination or the withdrawal are entrusted to another collective management organisation;
- (g) where a member authorises a collective management organisation to manage that member's rights—
  - (i) the member gives consent specifically for each of the matters referred to in paragraph (a), which the member authorises the collective management organisation to manage; and
  - (ii) that consent shall be in writing or in any other documentary form;
- (h) it informs a member of member's rights under paragraphs (a) to (g) and any conditions attached to the right in paragraph (c) before obtaining the member's consent to the collective management organisation managing the matters set out in paragraph (a);

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- (i) the rights under paragraphs (a) to (i) are set out in the memorandum and articles of association of the collective management organisation; and
- (j) in the organisation's memorandum and articles of association, there is an express provision that the organisation's primary objective is the collection and distribution royalties on behalf of its members.

#### **14. Membership rules of collective management organisations**

(1) A collective management organisation shall—

- (a) accept as members, where they fulfil the membership requirements specified in the articles and memorandum of association—
  - (i) rights holders; and
  - (ii) entities representing rights holders including other collective management organisations or associations of right holders; and
- (b) in a case where the organisation refuses to accept an application for membership, provide in writing to the rights holder the reasons for its refusal.

(2) A collective management organisation shall ensure that its membership requirements—

- (a) are based on objective, transparent and non-discriminatory criteria;
- (b) are included in its memorandum and articles of association; and
- (c) are made publicly available.

(3) A collective management organisation may impose a subscription fee on its members:

Provided that the subscription fee shall be agreed upon at a general meeting of the members and approved by the Board.

#### **15. Members of collective management organisations**

A collective management organisation shall—

- (a) ensure that its memorandum and articles of association provides for appropriate and effective mechanisms for the participation of its members in decision-making;
- (b) ensure that the representation of the different categories of members in decision-making process is fair and balanced;
- (c) allow its members, and rights holders who are not members but who have a direct legal relationship with it by law, license or other contractual arrangement, to communicate with it by electronic means for the purposes of exercising members' rights; and
- (d) keep and maintain records of its members and regularly update those records.

#### **16. General meeting of collective management organisations**

A collective management organisation shall ensure that—

- (a) a general meeting of its members is convened at least once a year;
- (b) the general meeting shall decide on any amendments to the memorandum and articles of association of the organisation, and the membership terms of the collective management organisation;
- (c) the general meeting shall decide the appointment and dismissal of the organisation's officials, review the officials' performance and approve their remuneration and other benefits;
- (d) in accordance with regulations 11, 12 and 13, the general meeting shall decide—
  - (i) the policy on the distribution of amounts due to members and right holders;



- (ii) the policy on the use of non-distributable amounts;
- (iii) the investment policy on rights revenue and any income arising from the investment of rights revenue;
- (iv) the policy on deductions from rights revenue and any income arising from the investment of rights revenue;
- (v) the risk management policy;
- (vi) the approval of any acquisition of, sale of or charge on immovable property;
- (vii) the approval of mergers and alliances with other organisations; and
- (viii) retained amounts and the purpose of the retention of the amounts;
- (e) the general meeting shall control the activities of the collective management organisation by appointing an independent external auditor to regularly audit its accounts;
- (f) all members participate in, and vote at, the general meeting;
- (g) every member has a right to a proxy to participate in, and vote at, the general meeting on the member's behalf:  

Provided that the appointment shall be in writing and shall not result in a conflict of interest; and
- (h) subject to subparagraph (g)—
  - (i) a proxy shall be valid for the general meeting at which it is used;
  - (ii) the proxy shall enjoy the same rights in the general meeting as those to which the appointing member would be entitled; and
  - (iii) the proxy shall cast his or her vote in accordance with the instructions issued by the appointing member.

## 17. Supervisory function

- (1) A collective management organisation shall monitor the activities of, and performance of duties by, persons managing the business of the organisation.
- (2) The purpose of supervision shall be to ensure that—
  - (a) there is a fair and balanced representation of the different categories of members in the body exercising the supervisory function; and
  - (b) the body exercising the supervisory function reports on the exercise of its powers to the general meeting at least once in each year.

## 18. Management, etc.

- (1) A collective management organisation shall ensure that any person who manages its business does so in a prudent manner, using prudent administrative procedures, accounting procedures and internal control mechanisms.
- (2) A collective management organisation shall establish procedures—
  - (a) for avoiding conflicts of interest; and
  - (b) where conflicts of interest cannot be avoided, to identify, manage, monitor and disclose actual or potential conflicts of interest in such a way as to prevent them from adversely affecting the collecting interests of rights holders represented by the organisation.
- (3) The procedures referred to in paragraph (2) shall include an annual statement by the person referred to in paragraph (1) to the general meeting, stating—
  - (a) any interests in the collective management organisation;
  - (b) any remuneration received in the preceding financial year from the collective management organisation including benefits in kind and other types of benefits;

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- (c) any amount received in the preceding financial year as a rights holder from the collective management organisation; and
- (d) a declaration concerning any actual or potential conflict between—
  - (i) any personal interests and those of the collective management organisation; and
  - (ii) any obligations owed to the collective management organisation and any duty owed to any other person.

(4) A collective management organisation shall ensure that its training procedures for employees, agents and representatives include appropriate training on conduct that complies with its obligations under these Regulations.

## 19. Lifestyle audits

(1) There shall be conducted, at least once in each year, a lifestyle audit of each member of staff of a collective management organisation.

(2) The lifestyle audit shall be conducted by an auditor appointed at the general meeting.

(3) The board of a collective management organisation shall ensure that members of its staff are not related to any member of the board.

## 20. Collection and use of rights revenue

(1) A collective management organisation shall ensure—

- (a) that it is diligent in the collection and management of rights revenue;
- (b) that it keeps separate in its accounts—
  - (i) rights revenue and any income arising from the investment of rights revenue;
  - (ii) any own assets it may have and income arising from such assets, from management fees, subscription fees or from other activities; and
  - (iii) administration and distribution amounts;
- (c) that it does not use rights revenue or any income arising from the investment of rights revenue for purposes other than distribution to rights holders, except where it is allowed—
  - (i) to deduct or offset management fees in accordance with the Act or these regulations; or
  - (ii) to use rights revenue or income arising from the investment of rights revenue in accordance with the Act or these regulations; and
- (d) that where it invests rights revenue, or income arising from the investment of rights revenue, it does so—
  - (i) in the best interests of the rights holders whose rights it represents; and
  - (ii) in accordance with the general investment and risk management policy of the organisation.

(2) The board of a collective management organisation shall seek the approval of distribution rules from the general meeting of its members.

(3) Any income sought to be retained by the collective management organisation shall be with the approval of the members in a general meeting and be expended for the purpose members have resolved.

## 21. Deductions

(1) A collective management organisation shall ensure that where a rights holder authorises it to manage the rights holder's rights, the organisation shall provide the right holder with information on—

- (a) management fees; and

- (b) any other deductions from the rights revenue and any income arising from the investment of the rights revenue before obtaining the right holder's consent to manage the right holder's rights.

(2) A collective management organisation shall ensure that deductions—

- (a) are reasonable in relation to the services provided by the collective management organisation to right holders; and

(3) A collective management organisation shall ensure that management fees do not exceed justified and documented costs incurred by the organisation.

(4) A collective management organisation shall ensure that where it provides social, cultural or educational services out of deductions from rights revenue or income arising from the investment of rights revenue, such services shall be provided fairly.

## 22. Distributions of amounts to rights holders

(1) A collective management organisation shall regularly, diligently and accurately distribute and pay amounts due to rights holders in accordance with the organisation's general policy on distribution.

(2) A collective management organisation shall distribute and pay the amounts due to right holders promptly, but in any event not later than the beginning of the period which starts nine months from the end of the financial year in which the rights revenue was collected.

(3) Notwithstanding paragraph (2), a collective management organisation may distribute or pay the amounts due to rights holders out of time if there are objective reasons for not distributing or paying the amounts including reasons relating to—

- (a) reporting by users;
- (b) identification of rights or right holders; or
- (c) matching of information on works and other matters with rights holders.

(4) A collective management organisation shall ensure that amounts due to right holders are kept separate in the accounts of the organisation where—

- (a) those amounts cannot be distributed within the specified time; and
- (b) paragraph (3) does not apply.

(5) A collective management organisation shall take all necessary measures to identify and locate rights holders for the purposes of distribution and payments of amounts due to the rights holders including—

- (a) making available, not later than three months after the beginning of the period specified in paragraph (2), information on works and other matters for which a right holder has not been identified or located to—
  - (i) the rights holders represented by the collective management organisation or entities which are its members and which represent rights holders; and
  - (ii) the collective management organisations with which it has concluded representation agreements;
- (b) verifying the relevant records relating to a rights holder for the purposes of distribution or payment of due amounts; and
- (c) where rights holders remain unidentified or not located, making the information referred to in subparagraph (b) available to the public not later than one year after the period referred to in subparagraph (a).

(6) The information referred to in paragraph (5) shall include, where available—

- (a) the title of the work or other matter;
- (b) the name of the rights holder;
- (c) the name of the publisher or producer of the work or other matter; and
- (d) any other relevant information which could assist in the identification of the rights holder.

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(7) Amounts due to right holders shall be non-distributable for the purposes of these regulations where—

- (a) they cannot be distributed before the end of the period of three years from the end of the financial year in which the collection of the rights revenue occurred; and
- (b) the collective management organisation has taken all necessary measures to identify and locate the right holders.

(8) A collective management organisation shall provide its members with statements of the royalties paid within a given period.

### **23. Rights managed under representation agreements**

(1) A collective management organisation shall not discriminate against any rights holder whose rights it manages under a representation agreement.

(2) Despite the generality of paragraph (1), a collective management organisation shall not discriminate against a rights holder whose rights it manages under a representation agreement with respect to—

- (a) applicable tariffs;
- (b) management fees; and
- (c) the conditions for—
  - (i) the collection of rights revenues; and
  - (ii) the distribution of amounts due to right holders.

### **24. Deductions and payments in representation agreements**

(1) A collective management organisation shall not make deductions, other deductions of management fees—

- (a) from the rights revenue derived from the rights it manages on the basis of a representation agreement; or
- (b) from income arising from the investment of rights revenue, unless the other collective management organisation that is party to the representation agreement expressly consents to the deductions.

(2) A collective management organisation shall regularly, diligently and accurately distribute and pay amounts due to other collective management organisations.

(3) A collective management organisation shall distribute or pay put amounts due under paragraph (2) promptly but in any event no later than the beginning of the period which starts nine months from the end of the financial year in which the rights revenue was collected.

(4) Despite the generality of paragraph (3), a collective management organisation may not distribute or pay out amounts due under paragraph (2) if there are objective reasons for not distributing or paying including reasons relating to—

- (a) reporting by users;
- (b) identification of rights or right holders; or
- (c) matching of information on works and other subject matter with right holders.

(5) The other collective management organisation referred to in paragraph (1) or, where it has a member which is an entity representing rights holders, that member shall ensure that it distributes and pays the amounts due to rights holders promptly but in any event not later than the beginning of the period which starts six months from the receipt of amounts, save where paragraph (4) applies with the necessary modifications.

### **25. Licensing**

(1) A collective management organisation—

- (a) and a user shall negotiate the licensing of rights in good faith; and
- (b) and a user shall negotiate in good faith the tariffs for exclusive rights and rights to remuneration in relation to—

- (i) the economic value of the use of the rights in trade taking into account the nature and scope of the use of the work and any other relevant matter;
    - (ii) the economic value of the service provided by the collective management organisation; and
    - (iii) the value added by any service providers and individuals; and
  - (c) shall notify the user in writing of the criteria used for the setting of the tariffs specified in subparagraph (b).
- (2) A collective management organisation shall—
- (a) respond promptly to requests from users indicating, among other things, the information needed in order for the collective management organisation to offer a license;
  - (b) upon receipt of all relevant information, promptly either—
    - (i) offer a license; or
    - (ii) deny the user a license and notify the user in writing of the reason for the refusal;
  - (c) allow users to communicate with it by electronic means, including the purpose of reporting on the use of the license; and
  - (d) after giving a user a license, treat that user in good faith.
- (3) Where more than one collective management organisation operates in one sector, the collective management organisations shall enter into a recognition agreement for joint negotiations of licensing and the joint collection of royalties.

## 26. Public participation in the development of copyright tariffs

Three months before tariffs approved under section 46A of the Act are due to expire, the Board shall—

- (a) notify the relevant collective management organisations to propose new tariffs for the next licensing period;
- (b) require the collective management organisations to compile a comprehensive list of users of their works by business association;
- (c) require the collective management organisations, within fourteen days after the expiry of the period specified in paragraph (a), to notify and share the proposals with users;
- (d) require the collective management organisations, within fourteen days after sharing the proposals with users, to hold a users' forum to discuss and negotiate the proposed tariffs for the purposes of approving the publication of the new tariffs in the *Gazette*;
- (e) require the collective management organisations, within seven days from the date of the meeting under paragraph (d), submit the discussed tariffs to the Board together with a copy of the resolution by the users agreeing to the new tariffs;
- (f) within seven days after receiving the approved tariffs under paragraph (e), invite, by notice in a newspaper with a nationwide circulation, the public, collective management organisations and any other interested party to a public forum to discuss the draft proposal and collect views on the proposal;
- (g) hold the public forum contemplated in paragraph (f) within fourteen days of the date of the notice specified in paragraph (f);
- (h) convene a group comprising of a member of the Board and a representative of the collective management organisations shall incorporate the views and comments from the public forum into the draft tariff proposal and submit it to the Board;

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- (i) convene a validation workshop of the public, collective management organisations and any other interested party within seven days of the forum convened under paragraph (g) to approve the revised tariffs; and
- (j) submit the revised tariffs to the Cabinet Secretary within seven days of being approved under paragraph (i).

## 27. Users' obligations

(1) A user and a collective management organisation shall enter into a written agreement on the information that the user shall provide to the collective management organisation where such information is necessary for—

- (a) the collection of rights revenues; and
- (b) the distribution and payment of amounts due to rights holders.

(2) The collective management organisation and user shall ensure that they take into account, as far as possible, voluntary industry standards on the format for the information referred to in paragraph (1).

## 28. Information provided to other collective management

(1) A collective management organisation shall make available by electronic means the information specified in paragraph (2) at least once in each year to the other collective management organisations on whose behalf it manages rights under a representation agreement for the period to which the information relates.

(2) The information required to be made available under paragraph (1) shall include—

- (a) the rights revenue attributed for the rights managed under a representation agreement;
- (b) the amounts paid by the collective management organisation—
  - (i) for each category of rights managed under the representation agreement; and
  - (ii) for each type of use for the rights managed under the representation agreement;
- (c) rights revenue attributed which is outstanding for any period;
- (d) deductions made in respect of management fees;
- (e) deductions made for a purpose other than in respect of management fees;
- (f) any licenses granted or denied with regards to works and other matters covered by the representation agreement; and
- (g) resolutions adopted by the general meeting insofar as the resolutions are relevant to the management of the rights under the representation agreement.

## 29. Information provided to right holders, other collective management organisations and users

(1) Subject to regulation 28, a collective management organisation shall make the information specified paragraphs (2) or (4), where applicable, available by electronic means and without undue delay, in response to a duly justified request, to—

- (a) a collective management organisation on whose behalf it manages rights under a representation agreement;
- (b) a right holder; or
- (c) a user.

(2) The information under paragraph (1) shall include—

- (a) the works or other subject matter the collective management organisation represents;
- (b) the rights the collective management organisation manages directly or the collective management organisation manages under representation agreements; and

- (c) the countries covered.

(3) Paragraph (4) shall apply where, due to the scope of the activity of the collective management organisation, the work or other subject matter which it represents cannot be determined.

(4) The information specified in this paragraph is—

- (a) the types of works of other subject matter the collective management organisation represents;
- (b) the rights the collective management organisation manages; and
- (c) the countries covered.

### **30. Disclosure of information to the public**

(1) A collective management organisation shall—

- (a) publish the information specified in paragraph (2); and
- (b) publish and keep up to date on its public website the information specified in paragraph (2).

(2) The information specified in this paragraph is—

- (a) the collective management organisation's memorandum and articles of association;
- (b) the list of officials of the collective management organisation;
- (c) the collective management organisation's policy on the distribution of amounts due to right holders;
- (d) the collective management organisation's policy on management fees;
- (e) the collective management organisation's policy on deductions, other than in respect of management fees, from—
  - (i) rights revenue;
  - (ii) income arising from the investment of rights revenue including deductions for the purposes of social, cultural and educational services; and
  - (iii) the complaint handling and dispute resolution procedures available or the collective management organisation; and
- (f) the collective management organisation's annual reports and audited accounts.

### **31. Form and contents of annual report**

(1) This regulation shall apply to the filing of annual reports and audited accounts under section 47 of the Act.

(2) Every registered collective management organisation shall, within three months after the end of the financial year, submit to the Board, in Form CMO 05 as set out in the Schedule, an annual report for that year accompanied by a copy of the organisation's audited accounts in respect of that year.

(3) The annual report referred to in paragraph (2) shall contain—

- (a) a comprehensive report of the organisation's activities during the year;
- (b) a list of the organisation's members at the end of the financial year;
- (c) the total amount of royalties collected by the organisation;
- (d) the amount of royalties paid to each member by the organisation;
- (e) the amount of money spent by the organisation on administration and operations;
- (f) the name, postal and physical address of the auditors of the organisation;
- (g) the amount of money used for the social fund;
- (h) non-distributed royalties and reasons for the non-distribution;

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- (i) the names, addresses and occupations of current officials of the organisation; and
- (j) any other relevant information as the Board may require.

### **32. Procedure of alternative dispute resolution**

(1) A collective management organisation shall make available to—

- (a) its members;
- (b) rights holders who are not its members but who have a legal relationship with it by law, assignment, license or other contractual arrangement;
- (c) collective management organisations on whose behalf it manages rights under representation agreement; and
- (d) users;

effective and timely procedures for dealing with complaints.

(2) The matters covered by the procedures for dealing with complaints referred to in paragraph (1) shall relate in particular to—

- (a) the authorisation to manage rights;
- (b) the termination or withdrawal of rights;
- (c) membership terms;
- (d) the collection of amounts due to right holders;
- (e) deductions and distributions;
- (f) the service provided; and
- (g) the conduct of members of staff during licensing.

(3) A collective management organisation shall—

- (a) respond in writing to complaints; and
- (b) give reasons where it rejects a complaint.

### **33. Alternative dispute resolution**

(1) A collective management organisation shall ensure that the disputes to which paragraph (2) applies can be submitted to an independent and impartial alternative dispute resolution procedure:

Provided that the parties shall consent to the alternative dispute resolution procedure.

(2) This paragraph shall apply to disputes between a collective management organisation and one of its members, a right holder, a user or another collective management organisation concerning compliance with these Regulations.

### **34. Notice for supply of information**

(1) The Board may give notice to—

- (a) a collective management organisation;
- (b) a member
- (c) a right holder or a body representing the interests of right holders;
- (d) a user or body representing the interests of users,

requiring the person to whom the notice is given to supply the information or document required in the notice at a time and a place and in a form and manner specified in the notice.

(2) The person to whom the notice is given shall supply to the Board the information or document which is specified or described in the notice.

(3) Nothing in this regulation gives the Board any power to require a person to supply any information or document which the person would be entitled to refuse to supply on the grounds of advocate-client privilege, on the grounds of confidentiality of communications, confidential business information or any information the disclosure of which is protected or otherwise restricted by any other law.



(4) Nothing in this regulation shall be construed as requiring a person to provide information if to do so might incriminate that person.

### 35. Notice of non-compliance

(1) Where the Board finds that a collective management organisation has failed to comply with its obligations under these Regulations, the Board may give a compliance notice to that person, body or organisation.

(2) A compliance notice shall be in writing and shall—

- (a) state the collective management organisation has not complied with a provision of these Regulations;
- (b) specify the provision in question and state the acts or omissions which contravene that provision;
- (c) request the collective management organisation, where non-compliance with the provision is continuing—
  - (i) to end the non-compliance within such time as the notice may specify; and
  - (ii) provide evidence that the non-compliance has ended;
- (d) if the Board thinks fit, request the collective management organisation to provide a written undertaking that non-compliance with the provision shall not be repeated; and
- (e) caution the collective management organisation that if—
  - (i) the organisation does not comply with the compliance notice, or
  - (ii) the organisation fails to comply with a written undertaking provided in respect of the compliance notice,

further action may be taken in accordance with the Act or these Regulations.

(3) The Board may withdraw a compliance notice and in doing so shall give the collective management organisation notice of the withdrawal.

(4) Where a compliance notice has been given, no action to impose a penalty under these Regulations may be taken in relation to that failure unless the collective management organisation to whom it has been given has failed—

- (a) to comply with the compliance notice; or
- (b) to comply with a written undertaking provided in respect of a compliance notice.

### 36. Penalty for non-compliance

(1) The Board may impose a financial penalty on a collective management organisation if the Board is satisfied upon hearing the collective management organisation that the collective management organisation has failed to comply with its obligations under these Regulations.

(2) Where the Board imposes a financial penalty on a collective management organisation under paragraph (1), the Board may also impose a financial penalty on a director, manager or similar officer of that collective management organisation.

(3) The amount of the financial penalty shall be such amount as the Board considers appropriate.

(4) In deciding what amount is appropriate the Board shall have regard to the nature of the failure of compliance.

(5) A financial penalty may comprise of either—

- (a) a sum not exceeding one hundred thousand shillings; or
- (b) a sum not exceeding one hundred thousand shillings together with a sum not exceeding ten thousand shillings for each day that the person referred to

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in paragraph (2) continues to fail to comply with its obligations under these Regulations:

Provided that the aggregate sum payable by the director, manager or similar officer shall not exceed one hundred thousand shillings

(6) A financial penalty shall be payable to the Board.

### **37. Demand for financial penalty**

(1) As soon as practicable after imposing a financial penalty,

the Board shall give notice of the financial penalty to the collective management organisation on whom it is imposed.

(2) The notice shall state—

- (a) that the Board has imposed a financial penalty;
- (b) the amount of the financial penalty;
- (c) the acts or omissions which the Board considers contravene these Regulations;
- (d) the provisions of these Regulation which the Board considers are contravened
- (e) any other facts which the Board considers justify the imposition of a financial penalty; and
- (f) the period, which shall be not less than twenty-eight days from the date the notice is received by the person, within which the financial penalty is to be paid.

(3) The Board may rescind a penalty which has been imposed on a collective management organisation and give the collective management organisation written notice of the rescission.

### **38. Appeals**

If a collective management organisation on whom a financial penalty has been imposed is aggrieved by the imposition or the amount of the financial penalty, the organisation may appeal to the Copyright Tribunal.

### **39. Recovery of unpaid penalties**

Where a financial penalty, or any portion of it, has not been paid by the time which it required to be paid, the Board may recover from the collective management organisation on whom the penalty is imposed any of the penalty which has not been paid as a debt due to the Board.

### **40. Penalty not to be paid during pendency of appeal**

Where an appeal or a court action is made against the decision of the Board to impose a financial penalty, the party filing the appeal is not under an obligation to pay the penalty pending the hearing and determination of the appeal and such non-payment shall not be deemed to be a continued violation of the penalty notice or the obligation giving rise to the penalty.

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SCHEDULE  
FORMS

FORM CMO 01

(r. 3(1))

THE COPYRIGHT ACT (CAP. 130)  
THE KENYA COPYRIGHT BOARD  
APPLICATION FOR REGISTRATION AS A COLLECTIVE MANAGEMENT  
ORGANISATION UNDER SECTION 46 (2) OF THE ACT

Name, email and postal address of the collective management Organization	
Physical address	
Name and address of agent (if any)	
Date and registration number of the Organization under the Companies Act, 2015	
Number of members of the Organization	
Class of copyright owners Represented	
<p>We attach herewith all the documents referred to in REGULATION 3 (1) in support of our application.  Dated at..... this..... day of....., 20.....</p> <div style="display: flex; justify-content: space-between; align-items: center;"> <div style="border: 1px solid black; width: 150px; height: 50px; margin-bottom: 10px;"></div> <div style="text-align: right;">Signature(s).....</div> </div> <p>Seal of the Collective Management Organisation</p>	

FORM CMO 02

(r. 3(2))

THE COPYRIGHT ACT (CAP. 130)  
THE KENYA COPYRIGHT BOARD  
CERTIFICATE OF REGISTRATION OF A COLLECTIVE MANAGEMENT  
ORGANISATION UNDER SECTION 46 (2) OF THE ACT

It is hereby certified that.....  
.....

has been registered as a collective management organisation under section 46 (2) of the Act under registration number .....for the ..... category of owners of copyright or related rights.

Dated at Nairobi this .....day of....., 20.....



Seal of the Board

Signature .....  
Executive Director,  
The Kenya Copyright Board

[Subsidiary]

FORM CMO 03

(r. 3(3))

THE COPYRIGHT ACT (CAP. 130)  
THE KENYA COPYRIGHT BOARD  
APPLICATION FOR REGISTRATION AS A COLLECTIVE  
MANAGEMENT ORGANISATION

Name, email and postal address of the collective management Organization	
Physical address	
Name and address of agent (if any)	
Date of registration	
Class of copyright owners	
Application number	
Registration number	
Any change which occurred during the past year (use a separate sheet, if necessary)	

We hereby apply for renewal of the registration of the Organization as a collective management organisation for the period.....

Dated at..... this..... day of....., 20.....



Seal of the Collective Management Organisation

Signature(s).....

FORM CMO 04

(r. 3(3))

THE COPYRIGHT ACT (CAP. 130)  
THE KENYA COPYRIGHT BOARD  
CERTIFICATE OF REGISTRATION OF A COLLECTIVE  
MANAGEMENT ORGANISATION

This is to certify that the registration of.....  
for the .....class of owners of copyright and related rights  
(delete as appropriate) owners of .....with  
registration number..... has been renewed.

The renewed registration will commence on .....day of..... expire on the  
.....day of .....20.....

Dated at Nairobi this .....day of....., 20.....



Signature(s).....  
Executive Director,  
The Kenya Copyright Board

Dated the .....20.....

*Copyright*

[Subsidiary]

FORM CMO 05

(r. 3(3))

THE COPYRIGHT ACT (CAP. 130)

THE KENYA COPYRIGHT BOARD

ANNUAL REPORT AND AUDITED ACCOUNTS FILED UNDER SECTION 47 OF  
THE ACT

Name and address of the collective management Organization	
Physical address	
Date of registration	
Class of copyright and related rights owners	

Dated at Nairobi this .....day of....., 20.....



Authorised Signature.....

Official Stamp of the Collective Management Organisation