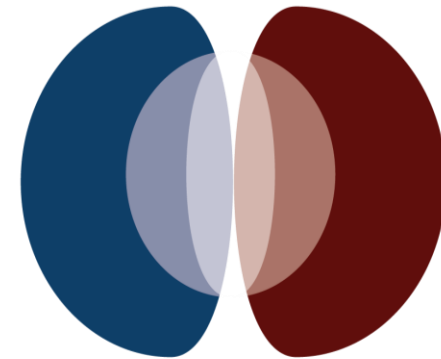


COPYRIGHT ACT - WEBINAR

Understanding & Creating Value in
Copyright

PRESENTED BY:



ONG'ANYA OMBO
ADVOCATES

COPYRIGHT



IMAGE RIGHT & PUBLIC INTEREST

A copyright owner may take a photo that entails someone else's depiction.



MORAL RIGHT

These rights are not transmissible during the life of the author save through testamentary or operation of law.



BRAND

A copyright may entail a brand product of the copyright owner or a third-party.



TRADE SECRETS & PATENTS

A copyright owner, (un)lawfully, may hold a copyright that entails trade secrets.



COMMISSIONING

A person commissioned to produce a work does not have any right unless agreed otherwise.



DATA PROTECTION & PRIVACY

A copyright may result in breach of data protection & privacy.



THE LAW ON COPYRIGHT

IN KENYA

REFERENCE TO COPYRIGHT LAW

Constitution of Kenya

- Article 2 (5): general rules of international law.
- Article 2 (6): ratified treaties or convention.
- Article 11 (2) (c): state to promote the intellectual property rights of the people of Kenya.
- Article 40 (2): limitation of laws that deprive or limit.
- Article 40 (3) (b): state depriving.
- Article 40 (5): support, promote and protect.
- Article 40 (6): lack of title due to unlawful acquisition.

Copyright Act

Judicial Precedents

- *Samson Gwer & 5 others v Kenya Medical Research Institute & 3 others* [2020] eKLR [SC] (IP & Employment)
- *Laban Toto Juma & 4 others v Kenya Copyright Board & 9 others* [2018] eKLR [HC] (CMOs)
- *Jessicar Clarise Wanjiru v Davinci Aesthetics & Reconstruction Centre & 2 others* [2017] eKLR [HC] (Image Rights)
- *N W R & another v Green Sports Africa Ltd & 4 others* [2017] eKLR [HC] (Image Rights)



WHAT IS COPYRIGHT?

The Copyright Act provides that “copyright” means copyright related rights under this Act.

Copyright Act: artwork, artistic work, audio-visual work, literary work, moral right, musical work, sound recording.

Copyright Act: Literal, musical or artistic work will only qualify for copyright if there **is sufficient effort done** to give the work an **original character and it is written down, recorded or reduced to material form**, while for purposes of a **broadcast**, it will only qualify for copyright **upon being broadcasted**.

WIPO: is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings.

Black’s Law Dictionary: a property right in an original work of authorship fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform, and display the work.



REGISTER OF COPYRIGHT

Registration Factors

- **Organisation:** Kenya Copyright Board (KECOBO).
- **Website:** <https://copyright.go.ke>
- **eCopyright Reg.:** <https://nrr.copyright.go.ke>
- Eligibility to Register Copyright.
- Registration Certificate as Evidence.
- Availability for Search by the Public.

Registration Factors

- Citizen of Kenya.
- Domiciled in Kenya.
- Ordinarily a Resident in Kenya.
- Body Corporate.

[Rights covered: literary, musical, dramatic, or artistic, and expires in 50 years].

Pseudonyms/Anonymous:

- Literary;
- Musical;
- Dramatic; or
- Artistic works.



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NATIONAL MUSEUM

Vested in the:

- National Museums Board of Directors; or
- National Museums.



COUNTRY OF ORIGIN

- Literary,
- Musical,
- Dramatic,
- Artistic work, or
- Audio-visual work



COPYRIGHT

Government & Int. Bodies

- Literary,
- musical,
- dramatic, or
- artistic work

will have protection for 50 years from the date of publication.

- Audio-visual, photograph, sound recording, or broadcast (50 years).

Rights Established

- a) the reproduction;
- b) the translation or adaptation;
- c) the distribution to the public of the work by way of sale, rental, lease, hire, loan, importation or similar arrangement;
- d) the communication to the public of the work or a substantial part thereof, either in its original form or in any form recognizably derived from the original;
- e) the making available of the whole work or a substantial part thereof, either in its original form or in any form recognizably derived from the original; and
- f) the broadcasting of the whole work or a substantial part thereof, either in its original form or in any form recognizably derived from the original.

ARCHITECTURE

Exclusive right to control the erection of any building that

- Reproduces the whole, or
- A substantial part of the work either in its original form or in any form recognizably derived from the original.

The right does not extend to the reconstruction of a building relating to that copyright.





LIMITATIONS

1. fair dealing for purposes of scientific research, private use, criticism or review, or the reporting of current events.
2. acts by way of parody, pastiche or caricature.
3. right to quote.
4. use in judicial proceeding or of any report of any such proceeding.
5. the reproduction and distribution of copies or the inclusion in an audio-visual work or broadcast, of an artistic work situated in a place where the public can view it.
6. the incidental inclusion of a copyright in an artistic work, sound, audio-visual work, or broadcast.
7. the reading or recitation in public or in a broadcast by one person of any reasonable extract from a published literary work if accompanied by a sufficient acknowledgment of the author.

COMPUTER PROGRAMS

Fair Dealing

To make a program operate with other programs, a user is allowed to do the following activities to a program without the right holder's authorization: decompile, convert into a version expressed in a different programming language, code, notation for purposes of obtaining information to enable it to operate with other programs.

Acceptable Activities

- a) to make copies of the program to the extent necessary to correct errors;
- b) to make a backup copy;
- c) for the purpose of testing a program to determine its suitability for the person's use; or
- d) for any purpose that is not prohibited under any license or agreement whereby the person is permitted to use the program.

VISUAL IMPAIRED & PEOPLE WITH DISABILITY

- The person taking such an action needs to provide various cautionary notices:
- moral rights; and
- original publication date.



ARTIST RESALE

- Right to sale is inalienable.
- Subsistence of the Copyright.
- Visual Artists may form a Collective Management Organisation (CMO).
- The AG designating a CMO to assume the role.
- Sellers of artwork's obligations to the artist.
- 5% of the net resale price.
- Artworks with name/identification of the artist.
- When the resale price is below KES. 20,000.00.
- Resale of a building or a drawing, plan or model of a building.
- An auction for charitable purposes.
- The works of the fine art produced are of identical copies.
- Concerns a manuscript of a literary, dramatic or musical work.

BROADCASTING OF WORKS IN AUDIO-VISUAL

- Authorization.
- An agreement not to incorporate & broadcast.
- The broadcasting content has music work.



NATURE OF COPYRIGHT IN BROADCAST

Include controlling the taking of still photographs from the broadcast, provides an exclusive right in Kenya to do the following:

- fixation, and rebroadcasting in whole or substantial part of the broadcast;
- communication to the public in whole or substantial part of television broadcast in original form or any form recognizably derived from the original;
- retransmission of the broadcast over any network;
- decrypting in any way or form any encrypted broadcast; or
- any adaptation or modification by way of commentaries, or any unauthorized expropriations of the broadcast or pre-broadcast signal meant for reception by another broadcaster





COPYRIGHT IN SOUND RECORDING

- Direct or indirect reproduction in any manner or form.
- Distribute to the public copies by way or sale, rental, lease, hire, loan or any similar arrangements.
- Making available of the sound recording in whole or in part either in its original form or in any form recognizably derived from the original.
- Importation into Kenya.
- Communication to the public or the broadcasting of the sound recording.
- A sound recording for personal and private.
- Making available of any audio recording equipment to enable any person to make single copies for personal or private.



COPYRIGHT

- Rights of Performers.
- Collection & Payment of Royalties.
- First Ownership.
- Moral Right of the Author.



LICENSE

- Assignment & Licenses.
- Copyright works withheld from Kenyan market.
- Rights of action and remedies of exclusive licensee and sub-licensee.



INFRINGEMENT



ACTIVITIES RESULTING IN INFRINGEMENT



INTERNET SERVICE PROVIDERS



RIGHTS OF A COPYRIGHT OWNER



TAKEDOWN NOTICE



LIMITATIONS/DEFENCES



OFFENCES AND PENALTIES



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QUESTION & ANSWERS