

A GUIDE TO THE PROTECTION OF COPYRIGHTS IN KENYA

In today's digital age, protecting intellectual property rights, particularly copyrights, is crucial for creators across various fields. Whether you are an artist, writer, musician or software developer, safeguarding creative works ensures that ownership and control is maintained over creations. This article explores the fundamentals of copyright protection in Kenya, offering insights into how to effectively safeguard creative works and navigate the legal landscape.

THE DEFINITION OF A COPYRIGHT

In Kenya, copyright protection is governed by the Copyright Act, Cap 130("the Copyright Act") and the Copyright Regulations, 2020("the Regulations"). A copyright is a right granted to the creator or author of original works. A copyright applies to a variety of creative works including: literary works, musical works, artistic works, dramatic works, audio-visual works, sound recordings, broadcasts and computer programs.

While copyright protection is automatic upon the creation and fixation of a work in a tangible form, creators may voluntarily register their works with the Kenya Copyright Board ("KECOBO"). Registration provides additional benefits, such as official recognition of the copyright, enhanced legal standing in the event of infringement and

clear proof of ownership in case of disputes. For instance, in the case of *Nonny Gathoni Njenga & Another v. Catherine Masitsa & 2 Others [2015] eKLR*, the court affirmed that the presented certificate of registration served as prima facie evidence of the first plaintiff's ownership of the literary works in dispute. This case involved a copyright infringement dispute concerning the unauthorized use of the plaintiff's creative works, highlighting how registration may strengthen a creator's legal position when enforcing their rights.

THE REQUIREMENTS FOR COPYRIGHT PROTECTION

(a) Originality:

Works must have original authorship. It is important to note that a copyright does not protect an idea itself but the expression of the idea in a physical form.

(b) Affixation:

The work should be presented in a tangible format such as a written text, a recording, a digital file or artwork, that can be reproduced or communicated.

(c) Eligibility:

The work must fall within one of the categories protected under the Copyright Act.

THE PROCEDURE FOR COPYRIGHT REGISTRATION

Copyright registration is administered by KECOBO and is carried out online through the Kenya National Rights Registry Portal at <https://nrr.copyright.go.ke/>.

The process involves the following steps:

- (a) The first step is to create an account or sign into an already existing account on the Portal.
- (b) Once logged in, fill in the details of the primary copyright owner. In cases where there is joint ownership, the details should also be included together with the percentage of ownership each party holds.
- (c) Provide the details of the copyright work including the title, genre, language applicable, release date and album (if applicable).
- (d) On submission, an SMS confirming receipt of the application will be sent.

(e) If successful, a certificate of registration is issued within approximately ten (10) working days.

THE DURATION OF PROTECTION OF A COPYRIGHT

Literary, musical, dramatic or artistic works other than photographs are protected for a period of 50 years after the end of the year in which the author dies. In case of joint authorship, the 50 years are counted from the date of death of the last author.

The protection of audio-visual works and photographs lasts for 50 years from the end of the year the work was created, first made available to the public or first published—whichever is latest. For sound recordings, protection lasts 50 years from the year the recording was made. Broadcasts are protected for 50 years from the year the broadcast took place.

Once the protection period lapses, the work enters the public domain, allowing anyone to make use of it without seeking permission from the copyright owner.

CONCLUSION

Copyright protection acts as a catalyst to ensure that creators attain recognition and have their copyright works protected. By understanding the basics of copyright law, meeting the necessary requirements of protection and following the outlined procedure for registration, creators can safeguard their intellectual property against unauthorized use and infringement.

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