



Music Copyright Society of Kenya Limited

NON-PROFITMAKING-NO SHARE CAPITAL-LIMITED BY GUARANTEE-AFFILIATED TO THE
INTERNATIONAL CONFEDERATION COPYRIGHT SOCIETY - CISAC

Reg. C5/83

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MUSIC COPYRIGHT SOCIETY OF KENYA PRESS STATEMENT ON THE PROPOSED AMENDMENTS TO THE COPYRIGHT ACT THROUGH THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL, 2022.

For Immediate Release

Our attention has been drawn to an insidious and outrageous maneuver by the Kenya Copyright Board (KECOBO) which has sneaked some amendments with far reaching implications on copyright administration into the Statute Law (Miscellaneous Amendment) Bill, 2022.

It shall be recalled that only two months ago, the President signed into law the Copyright (Amendment) Bill, 2021 which raised the Skiza Tunes revenue share from 16% to 52% in favour of musicians. It's therefore totally unacceptable, for the Kenya Copyright Board to propose further amendments to the Copyright Act within two months and under the guise of Miscellaneous Amendments, while in essence, the proposed amendments would fundamentally undermine the administration of copyright in Kenya.

MCSK together with other registered Collective Management Organizations (CMOs) namely the Kenya Association of Music Producers (KAMP) and Performers Rights Society of Kenya (PRISK), have examined the Copyright provisions of the said Bill and found them untenable and will therefore reject the said amendments as they are in breach of the constitution and international conventions to which Kenya is a signatory.

For starters, the Music Copyright Society of Kenya (MCSK) was formed by Right Holders (Authors, Composers, Arrangers, and Publishers) of Copyrighted Musical Works. MCSK was registered in 1983 (C. 5/83) as a company limited by guarantee under the Companies Act, Laws of Kenya to defend the rights of musicians in Kenya.

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Through Exclusive Deeds of Assignment and Exclusive Reciprocal Agreements, MCSK is mandated to administer and enforce compliance in Kenya, for Kenyan and International Right Holders, for the exploitation of the rights in Performances in Public Places (PPP), Communication to the Public (CTP), Broadcast, Mechanical Reproduction, and adaptation in copyrighted musical works.

The amendments proposed by KECOBO through The Statute Law (Miscellaneous Amendments) Bill, 2022 only serve to undermine the proper administration of copyright by MCSK and other CMOs namely the Kenya Association of Music Producers (KAMP) and the Performing Rights Society of Kenya (PRISK).

Additionally, the proposed amendments will water down the gains provided by the Copyright Act as assented into law by the President two months ago.

Additionally, KECOBO has published proposed regulations on Copyright registration that run counter to the constitution of Kenya which recognizes Copyright as an automatic right that requires no registration or payment to be recognized. The said regulations are also an affront to the Bern Convention and other international conventions to which Kenya is a signatory.

The proposed Amendments by KECOBO which have been mischievously sneaked into the Statute Law (Miscellaneous Amendment) Bill 2022 would significantly affect and infringe on the Fundamental Rights (Right to Property and Freedom of Association) of Musicians in Kenya.

The Bill seeks to, among other things, introduce sweeping legislative changes to the operations of Collective Management Organizations in general and MCSK in particular and proposes the establishment of a state agency to administer copyright, contrary to international practices and conventions to which Kenya is a signatory.

Indeed, it is a very sad day for the music industry in Kenya and for Right Holders generally when a Government Regulator such as KECOBO decides to abuse the Legislative (Parliament) process to disenfranchise and infringe on Constitutionally guaranteed Fundamental Rights of Musicians by systematically and meticulously continuing to amend

in piecemeal Sections of the Copyright Act that are very critical to administration and management of exploitation of economic rights (royalties) of Right Holders.

There's no other sector that has witnessed this kind of a mess, legislative chaos and insidious behavior by a regulator. No other industry has had its laws amended in a period of two months and KECOBO's malicious actions amount to sabotage of the industry growth.

KECOBO's actions through constant and repeated amendments (mutilation) to the Copyright Act have resulted in a lot of confusion, disruption, and acrimony in the Kenyan music industry to the detriment of Musicians and has also in the process economically benefited a few well-connected individuals and Companies that exploit rights in copyrighted musical works.

It's therefore, shocking to see that the Kenya Copyright Board would have the audacity to sneak obnoxious clauses with far-reaching changes on the industry in the guise of Miscellaneous Amendment, only two months after the President signed the Copyright Amendment Bill 2021 into law.

That notwithstanding, the Cabinet two weeks ago approved for publishing of The Intellectual Property of Kenya, Bill, 2022, paving the way for a new law that will merge the Kenya Copyright Board with the Kenya Industrial Property Institute to create one regulatory body.

It would be in the best interest of all Right Holders in Kenya if the government can focus more resources and energies on engaging (Public Participation) all the Right Holders/stakeholders instead of KECOBO focusing on irregularly making amendments to the Copyright Act to appease cartels in the industry at the expense of a whole music industry that employs millions of Kenyans and is supposed to contribute towards improving the GDP of Kenya.

It should also be noted that there's a Constitutional Petition pending in the High Court of Kenya at Nairobi, Petition No. E435 of 2020, MCSK Versus KECOBO that directly touches on some of the Sections that KECOBO has forwarded to Parliament for amendment.

The actions of KECOBO are not only infringing on the Fundamental Rights of Musicians and MCSK as protected in the Constitution of Kenya, but are also in contempt of Orders of the High Court of Kenya.

The Music Copyright Society of Kenya is deeply concerned with KECOBO's obsession with the management of CMOs and its lack of foresight and decency in dealing with such an important sector as Copyright.

In the light of the foregoing, the MCSK, KAMP and PRISK have petitioned the Attorney General and the Leader of Majority in the National Assembly to withdraw from the Statute Law (Miscellaneous Amendment) 2022 all the sections touching on Copyright to allow further industry consultations and also to await the publication of the Intellectual Property Bill which has already gone through the Cabinet.

MCSK, KAMP, PRISK and other like-minded institutions reject these proposed amendments and will explore all possible mechanisms to stop implementation of the provisions of the Statute Law (Miscellaneous Amendment) Bill 2022 on copyright and that they be shelved in total to allow further consultations.



Dr. Ezekiel Mutua, MBS

Chief Executive Officer